Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

SHAMS Q. NAJM,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

SHAMS Q. NAJM
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In Pro Per

QUESTIONS PRESENTED

1. Does determination by summary judgment of an employee's action for denial of employment based upon petitioner's race and age deprive petitioner of constitutional due process of law?

2. Does an act by an employer constitute an unfair labor practice against an employee in violation of the Taft Hartley Amendments National Labor Relations Act and the Railway Act deprive petitioner of constitutional due process and equal protection of the law?

3. Is an African American citizen of the United States and over the age of 40 and a resident of the State of California ineligible for public employment as a matter of law?

4. Does the principle of equal protection of the law entitle a public employee, in an action against a public entity, to appointed counsel, compensated by the public entity, where the public entity is represented by private appointed and compensated counsel?

LIST OF PARTIES

Shams Q. Najm, Petitioner

Superior Court of Los Angeles, Respondent

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OPINION BELOW

The opinion of the Court of Appeal of the State of California Second Appellate District. The Trial Court granted summary judgment in the county's favor and thereafter awarded the county attorney fees and costs. Najm appeals the judgment. We affirm the judgment, except we dismiss the purported appeal of the order granting the county attorney fees and costs. The original opinion of the Court of Appeal is unreported.

STATEMENT OF JURISDICTION

The Court of Appeal's judgment was entered on March 20, 2006. Order, opinion or decision became final July 6, 2006. Request for Judicial Notice denied. Petition for Review denied in the Supreme Court of California June 28, 2006. The jurisdiction of this court is invoked under 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The supremacy clause of the Constitution provides in relevant part: "[T]he Laws of the United States . . . shall be the supreme law of the land . . . anything in the constitution or laws of any state to the contrary notwithstanding." U.S. Const. Art. VI, Cl. 2.

STATEMENT OF THE CASE

The appeal here is presented from a summary judgment of the Los Angeles County Superior Court, the Honorable David A. Chaffee of the Orange County Superior Court, presiding by special assignment.

Petitioner, Shams Q. Najm, an African American/black person, over the age of forty (40) is employed as an Investigator Aide with the Los Angeles County Probation Department, who applied for a job as a Probate Investigator with the Los Angeles Superior Court Department of Human Resources (personnel department). His application was denied. Petitioner was given inconsistent reasons why his application was denied, including that he does or does not have the experience for the job. Petitioner met all the qualifications for the position.

On August 8, 2001, Petitioner applied for the Probate Investigator job, exam #C9754C, with the Respondent Superior Court of California, County of Los Angeles, located at 111 North Hill Street, Los Angeles, California 90012.

The selection requirements stated in the job notice were: "Graduation from an accredited college with a bachelor's degree in social work, psychology, gerontology, education, nursing or other closely related field – and – three years experience performing field investigations as a probation or parole officer, social worker, or other closely related occupation – and – one year field experience working with dependent and elderly adults and/or children – and demonstrated proficiency working with computers including Word and/or WordPerfect software to prepare clear and concise written reports."

Although it was readily evident that the Petitioner met all of these qualifications, as stated in his application and documentation, the Respondent summarily denied his application in a letter dated August 22, 2001, upon the pretext that the Petitioner did not meet any of the four selection requirements.

The rejection letter stated: "We appreciate the time and effort you devoted to presenting your qualifications. If you have any questions regarding this notice, please telephone Jennifer Revuelta, in the Recruitment and Selection Unit, at (213) 893-9767 within ten (10) business days from the postmark of the envelope."

On August 23, 2001, the Petitioner timely telephoned Jennifer Revuelta, of the court's human resources staff, to discuss the selection requirements. During the conversation, Ms. Revuelta conceded that without reviewing any new documentation, that the Petitioner's application did, in fact, indicate that he had the required educational degree, J.D. Law degree, Probate Administration Paralegal Certificate, and Conservatorship Certificate, that his job experience as an investigator gave him the required three years of probation/social worker type field experience. However, Petitioner did not have one year of field experience working with dependent and elderly adults and/or children, and that Petitioner did have the required computer skills. The only one of the four requirements that Ms. Revuelta said the Petitioner did not have was the one year of field experience working with children. Petitioner pointed out to Ms. Revuelta that the requirement was an "either/or" working with the elderly (conservatorship) or with children (guardianship). Although the Petitioner's application clearly indicates he had ten years of experience working with the elderly and over one year experience

working with blind children, Ms. Revuelta refused to consider that experience and stated that they were looking for someone with experience working with children.

Before ending the telephone conversation, Petitioner asked if there was any type of an appeal process that he could utilize. She said no.

Because of the false reasons for rejection of the Petitioner's qualifications (perjury) and the lack of an appeal process in writing Petitioner should be entitled to cross examination of Ms. Revuelta in open court.

License: At the time of appointment, candidate must have a valid California Class "C" Driver's License and use of private transportation to travel throughout Los Angeles and neighboring counties; reimbursable mileage averages 500 or more miles per month.

Respondent, on Summary Judgment Motion, objected to Petitioner submitting his mileage reports in his position as an investigation aide for the Los Angeles County Probation Department over a four-year period (2-1-99 thru 8-13-02) as irrelevant (Evid. Code § 350). Only relevant evidence admissible. No evidence is admissible except relevant evidence. This evidence is clearly relevant and should be admitted. Also, bank letters 8-21-02, 7-12-02 produced by U.S. Equal Employment Opportunity Commission: "There is no written documentation which explains the appeal process." Judge David Chaffee sustained Respondent's motion to have above evidence excluded. This is clearly prejudicial error.

Section 210 Relevant Evidence:

> "Relevant evidence means evidence, including evidence relevant to the credibility of a witness

> or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact, that is of consequence to the determination of the action."

This employment discrimination case was filed with the Equal Employment Opportunity Commission for a charge of age and race discrimination based on age and race discrimination within one year of the date discrimination was committed by the Respondent.

This case comes under the Fair Employment and Housing Act (FEHA). Racial discrimination in violation of the Civil Rights Act of 1964 (42 USCA Section 2000e, et seq.) and 42 USCA Section 1981 and the Age Discrimination in Employment Act (ADEA).

All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, be parties, give evidence and to full and equal benefit of all laws and proceedings for the security of persons and property or is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind and to no other (42 USCA Section 1981). The law establishes that freedom from job discrimination on specified grounds, including [national origin]. This is a civil right. It declares that such discrimination is against public policy (§ 12920) and an unlawful employment practice (§ 12940) [4].

> [4] Section 12940 provides: "It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California. [11](a) For an employer, because of

> the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person . . . or bar or to discharge the person from employment . . . or to discriminate against the person in compensation or in terms, conditions or privileges of employment . . . "

The central purpose of the Equal Protection clause of the 14th Amendment is the prevention of official conduct discrimination on the basis of race. *Washington Mayor of Washington, D.C. v. Davis*, 426 U.S. 229; 96 S.Ct. 2040 (1976).

Desirable qualifications:

- Experience dealing with people in locked or secured board and care facilities. Petitioner Najm has worked 10 years for the State of California Long Term Care Ombudsman Program in locked and secure skilled nursing care facilities.
- Knowledge of medical terminology, including understanding medical diagnosis and various types of effects of prescription drugs. Petitioner Najm has worked with doctors, psychiatrists, and social workers regarding residents of skilled nursing facilities medical treatment and medications they are taking.
- Ability to interview children and assess their needs. Petitioner Najm has one-two years experience working with blind children as a recreation leader at the Foundation of the Junior Blind.

- Ability to interview and communicate with a variety of people from different backgrounds. Petitioner Najm has demonstrated these skills even interviewing and communicating with a variety of people as a paralegal with the Orange County Legal Aid Society for two years and in his present position as an investigation aide with the County of Los Angeles Probation Department.

- Fluency in Spanish, in addition to English. Petitioner Najm had two years of Spanish language in high school.

For a prima facie case of race discrimination, a Petitioner must prove that: (1) He is a member of a protected class. Petitioner Najm is black/African American; (2) He was qualified for the position. Petitioner Najm fits the minimum qualifications for the position; (3) He was not promoted to a position eventually filled by a non-black/African American candidate. There is no question that Petitioner Najm has established a prime facie case of discrimination. Petitioner was facially more qualified for the position than the applicant who was hired; (4) Either the position was filled by someone not in the protected class, or the person was not promoted because of his race. See *Rutherford v. Harris County, Texas,* 197 F.3d 173, 179 (5th Cir. 1999)

The Respondent, County of Los Angeles Superior Court Department of Human Resources, asserts a racially non-discriminatory reason for the failure to promote Petitioner Najm. The candidate failed to complete the hiring process. Respondent cites *Ibarbia v. Regents of the University of California* 191 Cal.App. 3d 1318 (1987). In that case, the selection committee determined that Ibarbia was qualified for an interview. Ibarbia declined the interview. Petitioner

Najm's application was rejected. Even though he was fully qualified, he was not chosen or offered an interview.

Congresswoman Diane Watson of the 33rd Congressional District intervened on the Respondent's behalf. Petitioner Najm submitted a letter of reference to the County of Los Angeles Superior Court from Local 685, the Los Angeles County Probation Officers Union, the official bargaining unit recognized by the County of Los Angeles as the official bargaining unit. The letter was signed by Ms. Anita Olivares, Vice President Pre-trial Service Bargaining Unit (an investigator with Pre-Trial Services). The letter stated Petitioner Najm is a member in good standing and in his present position as an investigation aide the work is field related. An official Los Angeles County job description of the position was submitted along with the letter. Respondent violated Los Angeles County Probation Department personnel policy when they contacted manager/supervisor Frank McCormick, Pre-Trial Services Bail Deviation Program, for a reference regarding Petitioner Najm. This constituted an unfair labor practice under the Taft-Hartley Amendments of the National Labor Relations and Railway Act, depriving the Petitioner of his U.S. Constitutional 5th Amendment rights of due process and 14th Amendment rights of equal protection by not recognizing Petitioner's bargaining unit agreement and thereby breached the contract of an implied covenant to bargain in good faith.

The National Labor Relations Act declares that "employees shall have the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection" (29

USCA § 157, 9 FCA Title 29, § 157). To assure employees the full enjoyment of these rights, the act declares in § 8 that it shall be an unfair labor practice for an employer, inter alia, to interfere with, restrain, or coerce employees in the exercise of these rights (29 USCA § 158(1) 9 FCA Title 29, § 158(1)); to dominate or interfere with the formation or administration of any labor organization (29 USCA § 158(2) 9 FCA Title 29, § 158(2)); by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization (29 USCA § 158(3) 9 FCA Title 29, § 158(3)); or to refuse to bargain collectively with the duly chosen representatives of his employees (29 USCA § 158(5) 9 FCA Title 29, § 158(51)).

RULING ON SUMMARY JUDGMENT MOTION

The sole issue is whether the trial court erred in granting Respondent's motion for summary judgment.

A Petitioner may establish a claim of employment discrimination by the trial analysis first enumerated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1981). Although *McDonnell Douglas* was a Title VII case, this approach has been applied in ADEA cases. *Thornbrough v. Columbus and Greenville Railroad Co.*, 760 F.2d 633, 638-639 (5th Cir. 1985), held that material issues preclude summary judgment. In general, summary judgment is an inappropriate tool for resolving claims of employment discrimination which involve nebulous questions of motivation and intent (Fed. Rules of Civ. Proc. Rule 56(c), 29 USCA; age discrimination in Employment Act of 1967, Section 2-17 – amended, 29 USCA Section 621-634). If any

facts are in dispute in an employment discrimination suit, summary judgment is generally inappropriate.

It has been held that any indication of discriminatory motive . . . may suffice to raise a question that can only be resolved by a fact finder, and for that reason summary judgment for the Respondent will ordinarily not be appropriate on any ground relating to the merits because the crux of a Title VII dispute is the exclusive factual question of intentional discrimination. *Lyons v. England,* 307 F.3d 1092 (9th Cir. 2002).

The court is required to "accept the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences that can be drawn from them." *Hastings v. Department of Corrections*, 110 Cal.App. 4th 963, 970 (2003). The court is also obligated to review the facts in the light most favorable to Petitioner and resolve all factual disputes in Petitioner's favor. *Mandell v. County of Suffolk*, 316 F.3d 368, 377 (2nd Cir. 2002). In Petitioner Najm's case, none of this was done.

REASONS FOR ALLOWANCE OF THE WRIT

A factual dispute is natural if it bears on an essential element of the Petitioner's claim; and is genuine if a reasonable jury could find in favor of the non-moving party. *Coverland Greenspring Dairies v. Pan Milkway Mktg. Bd.,* 298 F.3d 210, 210 (3rd Cir. 2002) (quoting *Abraham v. Roso*, 183 F.3d 279, 287 (3rd Cir. 1999)). There are genuine issues of material facts about the Respondent's excuses for not hiring Petitioner Najm. There are circumstances that suggest that Petitioner Najm did not get the position be cause of some discriminatory motives. Petitioner Najm has

suffered an adverse employment action. Petitioner Najm has a prima facie case for discrimination. Also, attorney's fees are not recoverable for the Respondent under the Age Discrimination in Employment Act, so says the Congress of the U.S. Petitioner Najm's attorney's fees of $65,280 plus $1,106.54 (total $66,386.54) are excessive.

1. THE DECISION BELOW IS INCORRECT

An employment discrimination case based on age and race had been filed in the County of Los Angeles which thereafter was sent to the Superior Court of Orange County in Santa Ana, California for a hearing on Los Angeles County's motion for summary judgment or in the alternative for summary adjudication of issues in case #BC294436. Petitioner Najm opposed the motion by having served and filed opposition to the motion. Upon the date of the hearing on the motion for summary judgment in Department C25 of the Orange County Superior Court at Santa Ana, California, Petitioner Najm was confronted by the sight of a large picture of a shabbily dressed and deranged African American male person which was posted on the file cabinet of the courtroom. Petitioner Najm's case was put on calendar last so that Petitioner Najm had to endure that sight for three hours.

Prejudice of judges pertains to the mental attitude toward a party to the litigation, not entirely toward the subject matter which is involved. (30 AM J. Rev. ed. Judges § 170). A hostile feeling or a spirit of ill will, or undue friendship or favoritism, directed in favor or against one of the litigants. *Haslam v. Morrison*, 113 Utah 14, 190 P.2d 520 (1948).

Due to the unyielding machinery of white supremacy, white racism and prejudice, the Honorable Judge David R. Chaffee has not upheld his oath of office or a court officer, nor has he exercised his duties in a professional manner.

The judicial system is premised upon the principle that favoritism must not be shown throughout the process of adjudicating the right of any citizen or party to litigation.

Favoritism may be depicted by a brief example. Suppose a man comes into a meeting wearing a gold ring and fine clothes and a poor man enters wearing shabby clothes. If special attention is visited upon the man wearing the fine attire and the host says, "Here's a good seat for you," but to the poorly dressed man says, "You sit on the floor at my feet," or is commanded to "stand aside and keep silent," have you not discriminated between these two men? Has not disparaging conduct and evil thoughts then and there been visited upon the poor man? As an African American male, Petitioner Najm did experience intensely the perceived presence of racial discrimination resulting from the presence of such a poster in the courtroom during his day in court.

Complaint on Honorable David Chaffee, Judge, filed with the Commission of Judicial Performance May 11, 2006, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102; telephone (415) 557-1200.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX A

2006 WL 689305

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

SHAMS Q. NAJM, Plaintiff and Appellant, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, Defendant and Respondent.	B176724 (Los Angeles County Super. Ct. No. BC294436) (Filed Mar. 20, 2006)

Appeal from a judgment of the Superior Court of Los Angeles County, David R. Chafee, Judge. Affirmed in part and dismissed in part.

Shams Q. Najm, in pro per., for Plaintiff and Appellant.

Paul, Plevin, Sullivan & Connaughton, Fred M. Plevin and Michael R. Minguet for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Shams Q. Najm applied for a job with defendant and respondent the Superior Court of the State of California, County of Los Angeles (the County). The County rejected Najm's application. Claiming that his application was rejected because of his race and age, Najm sued the County for race and age

discrimination. The trial court granted summary judgment in the County's favor, and thereafter awarded the County attorney fees and costs. Najm appeals the judgment. We affirm the judgment, except we dismiss the purported appeal of the order granting the County attorney fees and costs.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

A. *The County posts a job bulletin for an investigator.*

In June 2001, the County posted a job bulletin for a probate court investigator, whose duties would be to investigate conservatorship and guardianship cases, to communicate with, assess, and work with persons subject to a conservatorship or guardianship, and to write reports of findings and recommendations. The position required a bachelor's degree in social work, psychology, gerontology, education, nursing or other closely related field; three years' experience performing field investigations as a probation or parole officer, social worker or other closely related occupation; one year of field experience working with dependent and elderly adults and/or children; and demonstrated proficiency working with computers including Word and/or WordPerfect software to prepare clear and concise written reports. "Desirable qualifications" were "experience dealing with people in locked or secured board and care facilities; knowledge of medical terminology, including understanding medical diagnosis and various types and effects of prescription drugs; ability to interview children and assess their needs; ability to interview and communicate with a variety of people from different

backgrounds; and fluency in Spanish, in addition to English."

The job examination consisted of two parts: (I) A qualifying evaluation of education, training, and experience based on the application materials submitted, and (II) an interview, to which only the most qualified applicants would be invited.

B. *Najm submits an application for the investigator position.*

Najm was born in 1945 and is Black. He applied for the probate court investigator position. In his written application, Najm stated he had a B.A. in social science. Since August 1998, he worked for Los Angeles County Probation Department-Pretrial Services Bail Deviation as an investigator aide. He described his duties as follows: "A complete criminal history on the defendants compiled along with police agency comments. All of the information is furnished to the on duty commissioner who makes a decision on the matter of bail." In his resume and in a supplemental questionnaire which asked him to describe his field investigative experience and investigative report writing experience, he submitted substantially the same response.[1] He added that he wrote 80-100 reports of an average length of one-to-two paragraphs per month. He also volunteered at Wise Senior Services, where he "advocate[d] on behalf of the elderly and dependent residents in

[1] "Interview defendants. A complete criminal history is compiled along with police agency comments. All of the information is furnished to the on duty commissioner who makes a decision on the matter of bail. . . . Gather the facts as to why the defendant was arrested."

skilled-nursing care facilities." His work at Wise also required him to "interact with the physician and psychologist of the resident regarding treatment/diagnosis/prescription." Najm did not speak, read or write any language other than English fluently.

By signing the application, Najm authorized "all employers and institutions to release to the Los Angeles Superior Court confidential information concerning my employment."

Also, as part of the application, Najm filled out an Equal Opportunity Employer Questionnaire, which requested he identify his race and date of birth.

C. *The County rejects Najm's application.*

By a letter dated August 22, 2001, the County informed Najm it could not accept his application because he did not meet the minimum experience requirements for the classification. He was told to direct any questions to Jennifer Revuelta, who was the human resources employee responsible for processing responses to the bulletin.

One week later, on August 29, 2001, Congresswoman Diane Watson sent a letter on Najm's behalf that requested the County to contact Najm to clarify the job requirements he did not meet. The County responded to Najm on September 18 by a letter that said Najm did not satisfy the requirements concerning field investigations. Najm's field investigation and investigative report writing experience with the probation department was nonqualifying because it lacked "depth and breadth" as compared to the activities performed by social workers and probation and parole officers. Investigator aides such as Najm rarely

go into the field, do not assess clients' physical and emotional well-being, and do not make independent judgments. The letter went on to state that although Revuelta had told Najm he lacked one year of field experience working with dependent and elderly adults and/or children, she now agreed that he satisfied that job requirement. Nonetheless, Revuelta had also told him he lacked the three years' field experience.

Over five months later, on February 28, 2002, Congresswoman Watson again wrote to the County stating that Najm remained "confused" as to why his application was not accepted. The letter further stated that Revuelta told Najm that the sole reason his application was denied was his lack of one year field experience with dependent and elderly and/or children. The letter also attached documents. The first document was the job bulletin for Najm's investigator aide position. That bulletin described his duties as "the more routine and less complex investigative activities." The second document, a flyer for Najm's job, more fully described the job requirements.[2] The third

[2] It said, in part: "Interviews persons in custody to record and verify information on applications for release on own recognizance and develops investigatory leads; contacts individuals to determine the accuracy of a defendant's statements, general reputation, character, employment history, community and family ties; confers with law enforcement officers to determine the nature of the instant offense and the defendant's level of participation in the offense; confers with various agencies to gather information pertinent to the release decision; reviews automated criminal history information to determine a defendant's criminal history; investigates and evaluates information to determine a defendant's potential threat to the community and likelihood of appearing in court when required, if released on own recognizance; analyzes all significant factors and information gathered during investigations to come to logical conclusions and prepares

(Continued on following page)

document was a letter from the probation officer's union stating that Najm was a member in good standing and that his duties as an investigator aide were fieldwork related and were not limited to the duties listed in the investigator aide job bulletin.

On March 21, 2002, the County, based on the indication in the union's letter that Najm's field work was more extensive than his job description indicated, stated it would reevaluate Najm's application. To that end, the County asked Najm to "detail his qualifying experience" and describe his fieldwork "with enough specificity to allow for a thorough reevaluation." The County also asked that any duties Najm performed that he believed to be at the level of a probation, parole officer or social worker be verified by his manager, Frank McCormick (Director, Pre-Trial Services).

Congresswoman Watson again responded on Najm's behalf on April 30, 2002. Najm did not believe further reevaluation was necessary, and he believed he should be allowed to take the exam.

On June 4, 2002, the County responded. It had contacted McCormick to confirm that Najm's duties as an investigator aide were fieldwork related and not limited to the duties listed in the job specification. McCormick would not concur with that statement. He instead said Najm did not go into the field to perform investigations, but rather performed standard investigator aide duties. Therefore, the County concluded that Najm was not qualified for the position. The County, nonetheless, said that if Najm

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written reports with a recommendation . . . ; testifies in court when required."

wanted to submit qualifying experience, he could do so with an acknowledgement by his manager. Najm never submitted any additional materials.

The County eventually hired Dorayne Salas for the position. Salas has a B.A. in social work, and she was a social worker for the Department of Children and Family Services (DCFS), which job required her to go into the field to interview minors, parents, caretakers, school and medical personnel, and counselors. As a part of her job, Salas wrote about 8-10 reports per month averaging 8-15 pages, assessed potential child abuse, created case plans, monitored children's status in foster care and parents' compliance with court orders, testified in court, and managed cases. Her experience working with clients with dementia consisted of monitoring the use of psychotropic drugs by minors. Salas speaks, reads, and writes English and Spanish.

II. Procedural background.

A. *Najm sues the County.*

Najm filed a charge of race discrimination with the Department of Fair Employment and Housing on May 30, 2002 that was referred to the Equal Employment Opportunity Commission. That same day, FEHA issued its right to sue letter. Najm then filed an amended charge, dated August 24, 2002, that alleged race *and* age discrimination.

Najm filed the complaint at issue on April 22, 2003. It alleged a single cause of action for violation of the Fair Employment and Housing Act (FEHA) based on disparate treatment on the basis of race and age.

B. *The County moves for summary judgment.*

In its motion for summary judgment or, in the alternative, summary adjudication, the County argued that Najm could not establish a prima facie case of race and age discrimination, the County had a legitimate, nondiscriminatory reason for rejecting Najm's application, and there was no evidence of pretext. The County also argued that Najm had not exhausted his administrative remedies as to his age discrimination claim.

In opposition to the motion, Najm submitted his declaration. He reiterated he was qualified for the job. He also said that after his application was denied, he spoke to Revuelta, who told him he had the required degree, computer skills, and three years' field experience, but that he lacked the one year field experience working with children. The County contacted McCormick, who was not his immediate supervisor, without his consent. He attached to his declaration travel logs to show he goes into the field.

He also submitted documents that the County had submitted to the EEOC. In one of those documents, Cynthia Banks, the Superior Court's director of human resources, stated that their receptionist receives applications and records information from equal opportunity questionnaires. Applications are then forwarded to the analysts, who in this case included Revuelta, who remove and shred the questionnaires. Banks also said that Revuelta did not know Najm's race when she reviewed his application.

C. *The trial court grants summary judgment, and Najm appeals.*

The trial court issued its order granting the County's summary judgment motion on May 13, 2004. The court held that Najm had not established a prima facie case of race or age discrimination because Najm failed to complete the application process, and he was not qualified for the position sought. Also, the person hired for the job was more qualified and there was no evidence of a discriminatory motive.

Before judgment had been entered, Najm prematurely filed, on July 12, 2004, a notice of appeal from the "order granting summary judgment." Thereafter, on July 27, 2004, the trial court granted the County's motion for attorney fees and costs based on 998 offers the County had made but Najm rejected. The court entered judgment on September 23, 2004.

DISCUSSION

I. Standards of review in motions for summary judgment in employment discrimination actions.

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citation.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) Thus, summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment meets its burden of showing there is no merit to a cause of action if that party shows that one or more

elements of the cause of action cannot be established or there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has made such a showing, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar v. Atlantic Richfield Co., supra,* at p. 849.) If the plaintiff does not make such a showing, summary judgment in favor of the defendant is appropriate.

On appeal from a summary judgment, we make "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. [Citations.]" (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222-223.) We "review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained. [Citation.]" (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*).)

Employment discrimination cases brought under Government Code section 12940, subdivision (a),[3] may

[3] Government Code section 12940, subdivision (a), provides, "It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: (a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program

(Continued on following page)

involve a claim of "disparate treatment," which "is *intentional* discrimination against one or more persons on prohibited grounds. [Citations.]" (*Guz, supra,* 24 Cal.4th at p. 354, fn. 20.) Because direct evidence of discriminatory motive is ordinarily unavailable, California courts have adopted a "three-stage burden-shifting test established by the United States Supreme Court for trying claims of discrimination . . . based on a theory of disparate treatment. [Citations.]" (*Id.* at p. 354.)[4] Under the *McDonnell Douglas* test, the plaintiff-employee must first set forth sufficient evidence to establish a prima facie case of discrimination. (*Guz, supra,* at pp. 354-356.) To establish a prima facie case of discrimination, plaintiff must show that (1) he or she was a member of a protected class, (2) he or she was qualified for the position he sought or was performing competently in the position he or she held, (3) he or she suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggesting a discriminatory motive. (*Id.* at p. 355; see also *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802 [a person who has been rejected for a job opening can establish a prima facie case of race discrimination by showing that (1) he or she was a member of a racial minority, (2) he or she applied and was qualified for an available job, (3) he or she was rejected despite his or her qualifications, and (4) the position thereafter remained open and the employer continued to seek applications from persons with similar qualifications].)

---

leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment."

[4] California courts look to federal precedent when interpreting our state employment discrimination laws. (*Guz, supra,* 24 Cal.4th at p. 354.)

By establishing a prima facie case, plaintiff creates a presumption of discrimination. The burden then shifts to defendant to establish a legitimate, nondiscriminatory reason for the adverse employment action. (*Guz, supra,* 24 Cal.4th at pp. 355-356.) If defendant satisfies its burden, then the presumption of discrimination disappears, and plaintiff must attack defendant's proffered reasons as pretext or offer other evidence of discriminatory motive.

II. Najm failed to establish a prima facie case of race and age discrimination.

We need not here address whether the County established a legitimate nondiscriminatory reason for rejecting Najm's application because Najm never established his prima facie case of race and age discrimination, and therefore there was no presumption of discrimination that the County had to rebut.

A. *Najm failed to complete the application process and was not qualified for the job.*

To establish his prima facie case, Najm had to show that he completed the application process. (*Ibarbia v. Regents of University of California* (1987) 191 Cal.App.3d 1318.) In *Ibarbia,* the plaintiff applied for a job, but his application was initially rejected because, among other things, he lacked the appropriate background and training. Plaintiff sent a letter of protest, and his application was reevaluated. Upon reevaluation, defendant offered the plaintiff an interview, which the plaintiff declined. The court held that plaintiff failed to complete the application process. (*Id.* at p. 1329; see also *Levy v. Regents of University of California* (1988) 199 Cal.App.3d 1334 [plaintiff

who said he "might" be interested in one job but never followed up on it and who failed to submit letters of reference for a second job failed to complete application process]; *Tagupa v. Board of Directors* (1980) 633 F.2d 1309 [plaintiff who merely submitted his resume for a position without setting forth those areas of his background that fit the advertised qualifications failed to apply for the job, and hence could not establish a prima facie case of discrimination].)

Here, Najm submitted his application, which was initially rejected. After Congresswoman Watson forwarded various documents, including one that implied Najm's duties as an investigator aide are fieldwork related, the County said it would re-evaluate Najm's application. The County therefore asked Najm to "detail his qualifying experience" and describe his fieldwork "with enough specificity to allow for a thorough reevaluation." The County also asked Najm to have his manager verify any duties he performed that he believed to be at the level of a probation or parole officer or social worker. In asking Najm to submit this information, the County was simply asking Najm to detail his three years' field experience, as his application failed to demonstrate he had any qualifying experience. Najm, however, never submitted any further information. Instead, he said he didn't believe reevaluation was necessary. Based on these undisputed facts, Najm failed to compete the application process.

But even if we were to assume that Najm completed the application process, he did not establish he was qualified for the job. Instead, the evidence shows – as the County asserted – that the type of field investigation and investigative report writing Najm performed as an investigator aide was "nonqualifying" and limited in "depth and

breadth." Aides such as Najm rarely go into the field "and do not assess the physical and/or emotional well being of their clients. Recommendations that are made do not require independent judgment as a bail deviation scale is used."

Najm's own cursory description of his experience as an investigator aide in the Los Angeles County Probation-Bail Deviation Department supports the County's conclusion he lacked the required fieldwork experience. Najm described his duties as follows: "A complete criminal history on the defendants compiled along with police agency comments. All of the information is furnished to the on duty commissioner who makes a decision on the matter of bail." That cursory statement reveals nothing about Najm's fieldwork experience, if any. Nor did the documents Congresswoman Watson submitted on Najm's behalf establish he had three years' field experience. Rather, his job bulletin described his investigator duties as "routine" and "less complex." Najm's manager, McCormick, similarly said that Najm did not have field experience. McCormick also said he could not confirm that Najm's duties are fieldwork related and are not limited to the duties listed in the job specification. McCormick said Najm does not go into the field to perform investigations but rather performs standard investigator aid duties.

Najm's dearth of qualifications for the probate court investigator position is emphasized when contrasted with those of the person, Salas, who was ultimately chosen for the job. Salas submitted a detailed application that showed she had a degree in social work and worked for DCFS. As a DCFS social worker, she had extensive field experience, namely, she went into the field to interview minors, parents, caretakers, school and medical personnel,

and counselors. Based on her work with foster care children who were undergoing psychological evaluations, Salas was familiar with medical terminology and the effects of various drugs. As a part of her job, Salas wrote about 8-10 reports per month averaging 8-15 pages in length, and she was fluent in Spanish.

In contrast, Najm's application failed to show he did any fieldwork; he did not detail his knowledge of and familiarity with medical terminology and understanding of medical diagnoses and effects of prescription drugs; his reports were only one-to-two paragraphs in length; and he did not speak any language other than English. Thus, not only did Najm fail to complete the application process, even if he did complete it, he did not establish he was qualified for the probate court investigator position.

B. *There was no evidence of a discriminatory motive.*

In addition to his failure to show he either completed the application process or was qualified for the investigator position, Najm failed to produce evidence of a discriminatory motive. Instead, as evidence of a discriminatory motive, he cited to his identification of his race and age on the Equal Employment Questionnaire, that the County gave inconsistent reasons for rejecting his application, and that the County contacted McCormick without his permission.

According to the County, when it receives applications, a receptionist logs the information on the questionnaire, and the questionnaire is thrown away. Revuelta, who reviewed Najm's application, said she was unaware of his race and age when she evaluated his application, a fact which Najm disputes. Even if we assume that the County

did know Najm's race and age, we cannot equate mere knowledge of Najm's race and age with a discriminatory motive.

Nor does the supposedly inconsistent reasons the County gave for rejecting Najm's application show a discriminatory motive. According to Najm, Revuelta told him he had the three years' field experience, but he lacked the one year of field experience working with dependent and elderly people and/or children. Thereafter, Don Heuman clarified that Najm did satisfy the one-year requirement based on his work at Wise Senior Services, but he nonetheless lacked the three years' field experience, a fact that Revuelta had also told Najm. Assuming there is an inconsistency, it does not give rise to evidence of a discriminatory motive. Whatever the County may have said about Najm's field experience, the simple fact is his application showed he did not have the requisite experience. Also, what reasons the County initially gave for rejecting Najm's application are irrelevant because the County thereafter said it would reevaluate his application and asked Najm to submit additional information, which he declined to do.

Also, that the County contacted McCormick rather than Najm's immediate supervisor does not show that the County had a discriminatory motive in rejecting Najm's application. First, it contacted McCormick *after* it had already initially rejected Najm's application and in an effort to ascertain whether Najm had qualifying experience. Second, Najm, by executing his job application, agreed to allow "all employers and institutions to release to the Los Angeles Superior Court confidential information concerning my employment." Finally, on this record, there is nothing improper about contacting Najm's manager rather

than his immediate supervisor. Indeed, it is altogether unclear how contacting McCormick shows a discriminatory motive.

We therefore conclude that Najm did not establish his prima facie case of race and age discrimination.

III. Najm did not file a timely notice of appeal from the order granting attorney fees and costs.

Najm filed his notice of appeal from "the order granting summary judgment" before the trial court had even awarded attorney fees and costs. Nonetheless, Najm purports to appeal that award of fees and costs. We hold that the appeal must be dismissed.

A postjudgment order awarding attorney fees is separately appealable. (Code Civ. Proc., § 904.1, subd. (a)(2); *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35.) The failure to appeal an appealable order ordinarily deprives the appellate court of jurisdiction to review the order. (*Praszker,* at pp. 46-47.) We cannot here deem the appeal from the order granting fees and costs to be premature. Under California Rules of Court, rule 2(e), we may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment. A notice of appeal filed before the court announces its intended ruling cannot be treated as a premature but timely notice of appeal. (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960-961.)

Here, Najm filed his notice of appeal *before* the trial court awarded attorney fees. Najm also did not state in his notice of appeal that he was appealing any award of

attorney fees. Instead, the notice of appeal that he filed states it is solely from the order granting summary judgment. We therefore dismiss the appeal from the order granting attorney fees and costs.

DISPOSITION

The judgment is affirmed in part and dismissed in part. The appeal from the order granting attorney fees and costs is dismissed. The judgment is otherwise affirmed. Respondent is to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

SHAMS Q. NAJM, Plaintiff, v. COUNTY OF LOS ANGELES; LOS ANGELES COUNTY SUPERIOR COURT; and DOES 1 through 100, Inclusive, Defendants.	CASE NO. BC294436 **ASSIGNED FOR ALL PURPOSES TO:** Department C25 **JUDGMENT BY COURT IN FAVOR OF DEFENDANT SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES AND AGAINST PLAINTIFF SHAMS Q. NAJM** (Filed Sep. 23, 2004)

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

The Court, having issued an order dated May 13, 2004, granting defendant Superior Court of California. County of Los Angeles' ("Superior Court") Motion for Summary Judgment and having issued its ruling on July 27, 2004, granting the Superior Court's Motion for Attorneys' Fees and Costs awarding to Superior Court its attorneys' fees in the total amount of $65,280.00 and costs in the total amount of $1,106.54 against plaintiff Shams Q. Najm, HEREBY ENTERS JUDGMENT in favor of defendant Superior Court of California, County of Los Angeles and against plaintiff Shams Q. Najm, thereby dismissing plaintiff's action in its entirety. Plaintiff Shams

Q. Najm shall take nothing and defendant Superior Court of California, County of Los Angeles shall recover from plaintiff Shams Q. Najm its attorneys' fees and costs in the total amount of $66,386.54.

Dated: 9-23-04

/s/ David R. Chaffee
JUDGE OF THE SUPERIOR COURT

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHAMS Q. NAJM, Plaintiff, v. COUNTY OF LOS ANGELES; LOS ANGELES COUNTY SUPERIOR COURT; and DOES 1 through 100, Inclusive, Defendants.	CASE NO. BC294436 **ASSIGNED FOR ALL PURPOSES TO:** Judge David R. Chaffee, C25, Orange County **ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES** (Filed May 13, 2004)

On April 20, 2004, defendant Superior Court of the State of California, County of Los Angeles' ("Superior Court") motion for summary judgment or, in the alternative, summary adjudication, came on for hearing in Department C25 of the Orange County Superior Court, Judge David R. Chaffee presiding. John Henrichs appeared on behalf of plaintiff Shams Q. Najm ("Najm") and Fred Plevin appeared on behalf of the Superior Court.

After full consideration of the evidence and papers submitted by counsel in connection with the motion for summary judgment or, in the alternative, summary adjudication, as well as oral argument thereon, the Court makes the following rulings.

The Court hereby sustains the Superior Court's objections to (1) Najm's Exhibits I and J, in their entirety;

(2) the statement, "I met all the requirements for a Probate Investigator" contained in paragraph 4 of Najm's declaration; (3) the statement, "I also met the three-year field investigator requirement" contained in paragraph 5 of Najm's declaration; (4) the statement, "In response, on or about September 18, 2001, Don Heuman, stated that Ms. Revuelta reevaluated my experience and stated it satisfied the requirements in the job announcement" contained in paragraph 11 of Najm's declaration; (5) the statement, "Attached to the [Watson] letter were documents recommending me and highlighting my experience and qualifications for the Probate investigator position with defendants" contained in paragraph 12 of Najm's declaration; and (6) Najm's Exhibit F, in its entirety. The Court hereby overrules the Superior Court's objections to (1) the first paragraph of the response to item 7 on page 2 of Najm's Exhibit I; (2) the first paragraph on page 2 of Najm's Exhibit J; (3) the statement, "In my current position . . . representing elders in senior care" contained in paragraph 5 of Najm's declaration.

With respect to defendant's motion for summary judgment, the Court finds that there is no triable issue of material fact in this action and the Superior Court is entitled to summary judgment as a matter of law. This ruling is made on the ground that Najm failed to establish a prima facie case of race or age discrimination in violation of the Fair Employment and Housing Act ("FEHA"). More specifically, the Court finds, based on undisputed facts presented in the motion, that (1) Najm failed to complete the application process for the position he sought, (2) Najm was not qualified for the position he sought, (3) the person hired for the position Najm sought was more qualified,

and (4) there is no evidence suggesting any discriminatory motive on the part of the Superior Court.

Finally, because the Court finds that the parties did not comply with California Rules of Court, Rule 342(b), the Court does not specifically rule on the Superior Court's motion for summary adjudication.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment filed by Defendant Superior Court of the State of California, County of Los Angeles is GRANTED and that judgment shall be entered in favor of defendant Superior Court of the State of California, County of Los Angeles and against plaintiff Shams Q. Najm. As the prevailing party, defendant Superior Court shall be entitled to its costs of suit.

Dated: MAY 13 2004

/s/ David R. Chaffee
HON. DAVID R. CHAFFEE
Judge of the Superior Court

APPENDIX D

Court of Appeal, Second Appellate District,
Div. 3 – No. B176724
S143549

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Jun. 28, 2006)

SHAMS Q. NAJM, Plaintiff and Appellant,

v.

SUPERIOR COURT LOS ANGELES COUNTY,
Defendant and Respondent.

Request for judicial notice denied.

Petition for review DENIED.

GEORGE
Chief Justice

APPENDIX E

[SEAL]

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
FAX (415) 557-1266
Web Site: http://cjp.ca.gov

August 2, 2006

Sylvia Castillo, District Director
Office of Assemblymember Karen Bass
47th Assembly District
5750 Wilshire Blvd., Ste. 565
Los Angeles, CA 90036

Dear Ms. Castillo:

We have received a request from Theresa Hayes of your office for information concerning a complaint reportedly filed by Shams Q. Najm with our office. Please be advised that Commission Rule 102 requires that all papers filed with and investigations by the commission shall be confidential. Although we are unable to apprise you of any action taken in this matter, we shall advise the complainant when the commission makes a final determination.

I am enclosing for your office copies of our information pamphlet. I hope you find these of interest.

Very truly yours,

/s/ Victoria B. Henley
Victoria B. Henley
Director-Chief Counsel

VBH:bmt/L0802castillo

Enclosures

APPENDIX F

[SEAL]

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
FAX (415) 557-1266
Web Site: http://cjp.ca.gov

August 29, 2006

Shams Q. Najm
5586 Village Green
Los Angeles, CA 90016

Dear Mr. Najm:

At its August meeting, the Commission on Judicial Performance determined not to take further action with respect to your complaint dated May 11, 2006.

After considering all the information before it about this matter, the commission concluded that your complaint does not provide grounds for proceeding further. No support for any allegation of impropriety by the judge you named has been uncovered. Therefore, no further action will be taken on your complaint.

We do appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

/s/ Colette Brooks
Colette Brooks
Staff Counsel

CB:ej/10829najm

(2)

No. 06-631

FILED
DEC 7 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAMS Q. NAJM,

Petitioner,

v.

COUNTY OF LOS ANGELES;
LOS ANGELES COUNTY SUPERIOR COURT,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the California trial court err in granting Respondent Superior Court of California, County of Los Angeles' motion for summary judgment in regard to Petitioner Shams Q. Najm's civil complaint for an alleged violation of the California Fair Employment and Housing Act?[1]

[1] While Petitioner has attempted to phrase several questions, the Petition only challenges the California trial court's summary judgment ruling: "The sole issue is whether the trial court erred in granting Respondent's motion for summary judgment." (Petition for Writ of Certiorari, p. 9.)

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PRELIMINARY STATEMENT

Petitioner Najm has provided absolutely no jurisdictional basis to grant his Petition for Writ of Certiorari in this matter. To begin, the Petition should be denied as untimely pursuant to 28 U.S.C. Section 2101(c). Further, in his Petition, Najm merely disagrees with the California trial court's grant of summary judgment in favor of Respondent Superior Court of California, County of Los Angeles ("Superior Court") in regard to his civil complaint for an alleged violation of the California Fair Employment and Housing Act ("FEHA"). As such, the Petition presents no jurisdictional basis for granting certiorari pursuant to 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

This case arises out of Petitioner Shams Q. Najm's application for employment as an Investigator with the Superior Court that he submitted to the Superior Court in August of 2001. After reviewing Najm's employment application materials, the Superior Court determined that Najm did not meet the minimum requirements for the position and disqualified him from further consideration. After being informed of his disqualification, Najm contacted the Superior Court for further information on its determination. In response, the Superior Court provided Najm with a detailed, written explanation of why he did not appear to satisfy the minimum requirements for the Investigator position and provided him with information on how to appeal his disqualification.

Over five months later, Najm again challenged the Superior Court's determination, claiming that he was

qualified for the position. In order to properly analyze his claimed qualifications, the Superior Court requested that Najm provide a description of his qualifying work experience. Najm, however, refused to provide any further information regarding his qualifications. Subsequently, the Superior Court again offered Najm the opportunity to provide information regarding his qualifications. Najm never provided the requested information. Rather than pursue a re-evaluation, Najm filed a civil lawsuit against the Superior Court claiming that it had discriminated against him on the basis of his race and age in violation of the FEHA by refusing to hire him. Thus, despite Najm's references in his Petition to federal statutes – such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, and the National Labor Relations Act, among others – Najm's civil complaint at issue in this matter only alleged a claim under California law.

In granting summary judgment in favor of the Superior Court, the trial court ruled that Najm failed to even establish a prima facie case of race or age discrimination because: (1) Najm failed to complete the application process for the position he sought; (2) Najm was not qualified for the position he sought; (3) the person hired for the position Najm sought was more qualified; and (4) there is no evidence suggesting any discriminatory motive on the part of the Superior Court. The trial court granted summary judgment in favor of the Superior Court by order dated May 13, 2004. Petition, Appendix C at p. App. 23.

Subsequently, the Superior Court brought a motion to recover its attorneys' fees and costs pursuant to California Code of Civil Procedure Section 998 and the FEHA. The trial court granted the motion for attorney fees and costs in its entirety. As a result, judgment in favor of the

Superior Court and against Najm was entered by the trial court on September 23, 2004. Petition, Appendix B at p. App. 20. Najm appealed this judgment.

Reviewing the record de novo, the California Court of Appeal, Second Appellate District, Division Three, agreed with the trial court's determination that Najm failed to establish a prima facie case of race or age discrimination in that he failed to complete the application process, he was not qualified for the position, and there was no evidence of any discriminatory motive on the part of the Superior Court. Thus, the Court of Appeal affirmed the trial court's grant of summary judgment in favor of the Superior Court. In regard to the order awarding attorney fees and costs, the Court of Appeal determined that Najm filed his notice of appeal only in regard to the summary judgment order and well before the trial court had awarded attorneys' fees and costs or entered a final judgment. Accordingly, the Court of Appeal considered Najm's appeal from the order granting summary judgment but dismissed his purported appeal from the order granting attorney fees and costs because it was insufficient and premature as a matter of law. The Court of Appeal's decision was filed on March 20, 2006. Petition, Appendix A at p. App. 1.

Subsequently, Najm filed a Petition for Review to the California Supreme Court, which was denied in its entirety by order dated June 28, 2006. Petition, Appendix D at p. App. 24. Najm then filed his current Petition for Writ of Certiorari on November 7, 2006.

NAJM'S PETITION FOR WRIT OF CERTIORARI LACKS A JURISDICTIONAL BASIS AND SHOULD BE DENIED

I. NAJM'S PETITION FOR WRIT OF CERTIORARI IS UNTIMELY

A petition for writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely if filed with the Clerk of the United States Supreme Court within 90 days after entry of the order denying discretionary review. 28 U.S.C. § 2101(c). The 90-day limitation is mandatory and jurisdictional. *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990).

Here, Najm's petition for discretionary review was denied by the California Supreme Court on June 28, 2006. Petition, Appendix D at p. App. 24. As a result, Najm was required to file his Petition for Writ of Certiorari within 90 days, or by September 26, 2006. Najm did not file his current Petition until November 7, 2006. As a result, Najm's Petition for Writ of Certiorari is untimely and should be denied.

II. NAJM'S PETITION LACKS ANY JURISDICTIONAL BASIS UNDER 28 U.S.C. SECTION 1257

The jurisdiction of the United States Supreme Court to review decisions of state courts by appeal is based upon 28 U.S.C. Section 1257, which reads as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty

> or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Here, Najm's Petition for Writ of Certiorari fails to invoke the Supreme Court's jurisdiction on any grounds. Instead, as Najm's Petition asserts: "The sole issue is whether the trial court erred in granting [the Superior Court's] motion for summary judgment." Petition, p. 9. Simply put, Najm's mere disagreement with the trial court's findings and ruling on summary judgment in regard to the application of state law does not provide a jurisdictional basis for review. In addition, none of the issues considered by the trial court or the California Court of Appeal invoke any of the bases for Supreme Court jurisdiction under 28 U.S.C. Section 1257.

III. CONCLUSION

Petitioner Shams Q. Najm has provided absolutely no jurisdictional basis to grant certiorari in this matter. Najm's Petition for Writ of Certiorari does nothing more than to simply disagree with the California trial court's findings and ruling on summary judgment regarding California law. Accordingly, Respondent Superior Court of

California, County of Los Angeles respectfully requests that Najm's Petition for Certiorari be denied.

Dated: December 7, 2006

Respectfully submitted,

FRED M. PLEVIN
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(3)

No. 06-631

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAMS Q. NAJM,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

SHAMS Q. NAJM
5586 Village Green
Los Angeles, CA 90016
(323) 299-1154

In Propria Persona

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SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8 of the Rules of the Supreme Court, petitioner Shams Q. Najm, in Propria Persona, respectfully submits this Supplemental Brief to call the court's attention to the County of Los Angeles Employee Relations Committee Administrative hearing September 25, 2006 and the State Bar of California complaint (complaint no.06-27681), filed October 30, 2006 against attorney John Henrichs, state bar no. 14025, 835 Wilshire Boulevard, Suite 300, Los Angeles, California 90017 mailed to: Office of the Chief Trial Counsel/Intake State Bar of California, 1149 South Hill Street, Los Angeles, California 90015-2299.

I. County Of Los Angeles Employee Relations Commisson Administrative Hearing, September 25, 2006.

COUNTY OF LOS ANGELES
PERSONNEL CODE
CHAPTER 5.04
EMPLOYEE RELATIONS

5.04.070 Employee Rights. Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters of employee relations. Employees of the County also shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights (Ord. 9646 § 4, 1968).

5.04.240 Unfair employee relations practices designated – corrective action. A. It shall be an unfair employee relations practice for the County:

1. To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this chapter.

* * *

3. To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

Petitioner filed a charge alleging an unfair employee relations practice against Frank McCormick, Director/ Manager of the Bail Deviation Program within the meaning of Section 12, Subsections (a) 1, (b) 1 of the Employee Relations Ordinance or Rule 6, Subsections 6.01 and 6.13 of the Commission Rules and Regulations.

(a) It shall be an unfair employee relations practice for the County:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this ordinance.

* * *

(b) It shall be an unfair employee relations practice for employee organizations or their representatives or members.

(1) To interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this ordinance;

* * *

Rule 6: UNFAIR EMPLOYEE RELATIONS PRACTICE

6.01 FILING

A charge that the County, an employee organization or its representatives or members, individually or in concert with others, have engaged in or are engaging in any unfair employee relations practice as defined in the ordinance, or otherwise have violated or are violating the ordinance or rules and regulations issued there under, may be filed by a management representative, by a representative of an employee organization, or by an individual employee or group of employees. Such charge shall be filed in writing on a form provided by the commission, shall be signed, and shall contain a declaration by the person signing, under penalty of perjury, that its contents are true and correct to the best of his knowledge and belief.

A charge shall be deemed untimely and subject to dismissal if filed, with the commission at its office in excess of one hundred eighty (180) days following the occurrence of the alleged act or acts on which the charge is based, or the date on which the charging party knew or should have known of said conduct, this rule (6.01) shall not be subject to the waiver of time requirements of Rule 6.13.

Rule 6.12: APPEALS

Within ten (10) days after the issuance of the decision and order by the commission, any interested party may file a motion for rehearing or reconsideration setting forth specific grounds therefor. The motion shall be accompanied by five (5) copies and a separate statement that it has

been served on all parties appearing in the proceedings. Any of such parties may file a written response to such motion within five (5) days of receipt of a copy thereof. The Commission may, but need not, hold a hearing on such motion. Thereafter, the Commission shall in writing affirm, modify or set aside its previous determination and that action shall be considered final.

Rule 6.13: WAIVER OF TIME REQUIREMENTS

Either the commission or the hearing officer, as the case may be, may act to modify or waive any of the specific time requirements set forth in this rule upon a showing of good cause, except that the individual hearing officer shall not be empowered to extend the time for filing his report without the consent of the commission.

On August 9, 2001 petitioner had included the name of his immediate supervisor Al Welch on his job application for probate investigator with his supervisor's phone number. The Superior Court Department of Human Resources did not contact him (see App. 64). Instead they called Frank McCormick, Manager of Bail Deviation/Pre-Trial Services.

In a letter dated June 4, 2002 to Congressman Diane E. Watson from Cynthia D. Banks, Director of Human Resources for the Superior Court of California, County of Los Angeles, 111 North Hill Street, Los Angeles, California 90012 (App. 81-82). In response to Congressman Diane Watson's letter dated April 30, 2002 on behalf of the petitioner, App. 79.

"In order to substantiate the assertion that Mr. Najm possesses the qualifying experience as indicated in the letter submitted by Anita Olivares, Investigator/Union Representative Pre-Trial Service, Vice President of Local 685, we contacted his manager, Mr. Frank McCormick, Director, Pre-Trial Services. Ms. Olivares wrote Mr. Najm's investigator aid duties are field work related and not limited to the duties listed in the Los Angeles County classification specification of investigator aid, probation. On May 16, 2002 (see App. 81) Mr. McCormick was asked to verify the accuracy of Ms. Olivares' statement; he did not concur with the statement. Furthermore, Mr. McCormick stated that Mr. Najm does not go into the field to perform investigations, but rather performs standard investigator aid duties."

"Based on the aforementioned, it is with regret Mr. Najm is not eligible to continue in the examination process."

Anita Olivares' letter dated November 19, 2001
Re: Shams Najm, Investigator
App. 74, 75, 76

Based upon the facts as stated above, petitioner filed an unfair labor practice with the County of Los Angeles Employee Relations Commission against Frank McCormick, Director/Manager, Bail Deviation; petitioner was placed on the agenda September 25, 2006 (App. 1).

Statute of Limitations Rule 6.01 Los Angeles County Employee Relations Commission Rules and Regulations August 1995 Edition Statute of Limitations raised federal constitutional question depriving petitioner of property without due process of law, in violation of the Fourteenth Amendment.

Burnett v. New York Central Railroad Co., 380 U.S. 424, 428 (1965): "Petitioner here did not sleep on his rights but brought an action within the statutory period in a state court of competent jurisdiction. Service of process was made upon the respondent notifying him that petitioner was asserting his cause of action." *Id.* at 429. Respondent was put on notice by the Equal Employment Opportunity Commission, a Federal agency, regarding petitioner's complaint (see App. 41-54).

II. The State Bar Of California Complaint Form Dated October 30, 2006 Against Attorney John Henrichs, State Bar No. 14025/Office Of Chief Trial Counsel/Intake Inquiry #06-27681.

Attorney has a duty of fair representation to his client. The record will show Petitioner met with the Attorney, John Henrichs, only four or five times. A lawyer has a duty of loyalty to his client, to remedy a breach of duty of fair representation a court must assure an award "fashioned to make the injured party whole." *Electrical Workers v. Foust*, 442 U.S. 42, 49 (1979).

Legal services rendered through Henrichs Law Firm, P.C.:

12/09/03 GRL telephone conference with Najm re: letter from Supervisor Welch; research Najm intends to do to present to judge, trying to get facts for defendant's summary judgment motion; has written Washington so they can investigate; notes to file. Law firm did not file supervisor Al Welch's letter with the court.

GRL: At the trial level it is a factual inquiry as to whether the evidence supported the petitioner's claim in

an action to enforce the complaining party's right to government employment information bearing on his qualifications and experience is highly relevant and potentially could determine the outcome of the case.

12/23/03: Review and analyze letter of reference from Legal Review Aid Society of Orange County for Shams Najm; Najm's letter to supervisor requesting information on position. These two documents were not submitted to the court as the petitioner requested. This constituted a breach of a contract that I had with attorney John Henrich that I had paid my money for in the retainer.

Had they contacted the probation personnel office, they would have been informed that petitioner had passed the Deputy Probation Officer 1 Field Exam.

Privately-retained attorney committed serious errors in not presenting certain evidence which was made available to him by the petitioner, and the evidence consisted of a favorable letter of reference from a former employer which attested to the applicant's qualifications for the position and a letter from his supervisor Al Welch in response to petitioner's letter requesting a letter of reference verification of petitioner's interviewing skills the past five years. Al Welch's response was probation supervisors and managers (which Frank McCormick is) do not provide reference letters per departmental policy. Any employment-related verification should be directed to the probation department's personnel services in writing by the requesting agency.

Frank McCormick's statement to County of Los Angeles, State of California, Superior Court, Personnel Department, was a reference regarding the petitioner and he should have directed them to the probation department's

personnel service per letter that was also sent to him by supervisor Al Welch.

In effect, this was a violation of petitioner's due process rights under the Fourteenth Amendment constituting an unfair labor practice under the National Labor Relations Act, Taft-Hartley and Railway Act.

Provided the County had appointed legal representation for petitioner, a tax-paying citizen, the quality of representation potentially would have matched the quality of representation received by the County.

Petitioner is fighting for his integrity, his honor and the rectitude of what petitioner has said. How do you judge? Surely conjecture will not avail against the truth.

CONCLUSION

For the above reasons, petitioner respectfully requests that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,

SHAMS Q. NAJM
In Propria Persona
5586 Village Green
Los Angeles, CA 90016
(323) 299-1154

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

[SEAL]

374 Hall of Administration,
500 W. Temple Street, Los Angeles, CA 90012

(213) 974-2417

Joseph F. Gentile, Chair
Edna E.J. Francis, Member
Dr. Art Hernandez, Member

Paul R. Causey, Esq.
Executive Officer

AGENDA

September 25, 2006

A meeting of the Los Angeles County Employee Relations Commission will be held at **1:00 p.m.** Monday, September 25, 2006.

1. Approval of Minutes of August 28, 2006

2. Report of Executive Officer

3. Consideration of requests or arbitration:

* * *

4. Consideration of requests for unfair practice charges:

* * *

c. Shams Q. Najm
– UFC 19-06: Probation Department (discrimination)

* * *

/s/ Paul R. Causey
PAUL RAYMOND CAUSEY
Executive Officer

THE REGULAR MEETING OF THE EMPLOYEE RELATIONS COMMISSION WILL BE HELD EVERY FOURTH MONDAY OF THE MONTH AT 1:00 P.M.

[SEAL]

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION
374 Hall of Administration, 500 W. Temple Street, Los Angeles, CA 90012

213-974-2417
213-633-0929 Fax

Joseph F. Gentile, Chair
Edna E.J. Francis, Member
Dr. Art Hernandez, Member

Paul Raymond Causey, Esq.
Executive Officer

Mr. Shams Q. Najm
5586 Village Green
Los Angeles, CA
90016-5109

Re: UFC Case No. 19-06

Dear Mr. Najm:

This letter will confirm that I informed you that there is no further administrative process for appealing ERCOM's dismissal of your Unfair Practice Charge No. 19-06 and that your sole recourse to challenge this dismissal is by proceeding with an appropriate action in the Los Angeles County Superior Court. (See Title 5, Los Angeles County Code, Chapter 5.04, *Employee Relations.)*

Very truly yours,
/s/ Paul R. Causey
Paul Raymond Causey
Executive Officer

c: Supervisor Yvonne B. Burke
2nd District
Attn: Chuck Bookhammer
Asst. Chief of Staff

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION
374 Hall of Administration,
[SEAL] **500 West Temple Street,**
Los Angeles, CA 90012

Telephone: 213 974-2417 Fax: 213-633-0929
E-Mail: Ercom@box.co.la.ca.us

Joseph F. Gentile, Chair
Edna E.J. Francis, Member
Dr. Art Hernandez, Member

Paul Raymond Causey, Executive Officer

MINUTES

September 25, 2006

The meeting was called to order at 1:00 p.m. by the Chairman.

Present: Joseph F. Gentile
Edna E. J. Francis
Arthur Hernandez

Approval of Minutes

It was moved and carried to approve the Minutes of August 28, 2006.

Report of the Executive Officer

Nothing to report.

The Commission took the following action on requests for arbitration:

* * *

Filed by Shams Q. Najm
– UFC 19-06: Probation Department (discrimination)

The County opposed the matter. Over opposition of Mr. Najm, it was moved and carried to dismiss the matter as untimely (beyond 180 days).

* * *

/s/ Paul R. Causey
PAUL RAYMOND CAUSEY
Executive Officer

5586 Village Green
Los Angeles, CA 90016-5109

November 28, 2006

Mr. Paul Raymond Causey
Executive Officer
Los Angeles County Employee Relations Commission
374 Hall of Administration
500 W. Temple Street
Los Angeles, California 90012

Dear Mr. Causey:

I was informed by you that there was no appeal from the findings and ruling of the Los Angeles County Employee Relations Commission upholding the denial of employment as a Probate Investigator. At a later time, I discovered that the Rules and Regulations of the Los Angeles County Employee Relations Commission, Rule 6.12, does in fact provide for an appeal. Accordingly, I respectfully request and demand that these proceedings be reopened, that I be afforded the opportunity to file an appeal, and that the appeal be entertained, considered and ruled upon on the merits thereof.

Sincerely,

Shams Najm

cc: Supervisor Yvonne Burke
2nd District
Attn: John Hill, Chief of Staff
Attn: Chuck Bookhammer, Asst. Chief of Staff

Mail to:

Office of The Chief Trial Counsel/Intake
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

Najm v. Los Angeles County, Los Angeles County Superior Court Case # BC 294436

To Whom It May Concern:

Attorney John Henrichs (213) 239-0505 verbally agreed to represent me in a case regarding employment discrimination (based on age and race) on a contingency fee basis. On 01-31-2003 I wrote him a check for a retainer's fee of $1,500.00. I signed a retainer's agreement. While the case was in progress during a Summary Judgment Proceeding at the Orange County Courthouse in Santa Ana, California he withdrew his representation stating in court documents that I had not paid him. After court I that day at the courthouse I gave him a cashiers check for $7,579.55. He did not refund any of the money even after the Judge is on record stating he commit a malpractice in his reply to the Summary Judgement. Subsequently the Superior Court in Orange County ruled against me in the Summary Judgment Hearing. My appeal to the Court of Appeals and The California Supreme Court were unsuccessful.

In essence he was not completely honest with me upfront. He had been keeping a running tabulation of billing hours that ultimately he billed me for. He filed a lawsuit on my behalf against the County of Los Angeles for employment discrimination around 04-25-2003. On 05-30-2002 I had filed an employment discrimination claim with The Equal Employment Opportunity Commission

"EEOC" based on age and race discrimination. On 08-09-01, I applied for the Probate Investigator Position with the Probate Court, County of Los Angeles, California, State Superior Court; 111 N. Hill Street; Los Angeles, California 90012. On 08-22-2001 I was sent a letter of rejection for the Probate Investigator position. It stated the selection requirements as being the reasons for my application being denied and gave a telephone number to contact Ms. Jennifer Revuelta within 10 days for clarification of the reasons my application was not accepted. I placed the call as instructed. As I went over with her the qualifications, she told me that the reason my application was rejected was that I did not have 1 years field experience working with children and/or adults. My application clearly showed I did have 1 years field experience working with both children (guardianships) at The Foundation of the Junior Blind and elderly adults (conservatorships) in skilled nursing facilities and locked facilities on heavy medications. She went on to say that my education, work experience with Pre-Trial Services Bail Deviation, County of Los Angeles Probation Department and my computer Skills qualified me for the Probate Investigator Position. However, She stated that they were looking for someone who had experience working with children even though the bulletin does not specifically say that. She did an end run on me because they did not want me to have the position. We ended our conversation.

That day I contacted my Congress Representative Honorable Diane Watson 33rd Congressional District. I informed her office of my conversation with Ms. Ruevuelta. The Congresswoman writes a letter on my behalf to the Clerk of the Superior Court, Mr. Clark. The Department of Human Resources Mr. Hueman responds

basically in a state of denial regarding the conversation I had with Ms. Ruevuelta.

An unfair labor practice was committed against me. The Superior Court by letter dated 03-21-2002 stated by letter to Congressperson Diane Watson to have Pre-trial Director/Manager Frank McCormick verify my field experience.

On 04-30-2002 Congresswoman Diane Watson sends a letter of supporting documentation from Local 685 Los Angeles County Probation Officers Union of which I am a member in good standing clarifying my present job description is field work related.

In May 2002, Los Angeles Superior Court Department of Human Resources contacts Frank McCormick without my knowledge goes over, Al Welch, my immediate supervisors head at the time I applied for the job. They did not contact Mr. Welch. Based upon Frank McCormick contradicting the Probation Officers Union assessment, the Superior Court, Department of Human Resources, did not offer me an interview for the position.

I had given a letter to Attorney Henrich that I had received from Senior Investigator Al Welch stating that any employment related verification should be directed to the Probation Department's Personnel Services Office in writing by the requesting agency (letter dated Jan. 12, 2004). Attorney Henrich did not submit the letter into evidence to the court. I had given him a letter for Katherine L. Brooks Probation Personnel Officer stating that I took and passed the written test for Probation Officer 1 (Field) examination October 25, 1997. (letter dated Jan. 21, 2004). There was also a reference letter from Attorney Katherine Grant Weider stating that I was a paralegal for

2 years with The Legal Aid Society of Orange County. He did not submit that letter in to evidence during discovery. These documents go to the heart of my case.

There are damages, court cost, attorneys fees in the amount of $66,386.54 + $1,500.00 + $7,579.55 paid to Attorney Henrich. Another Attorney referred Attorney Henrich to me. Stating this was the type of cases he handled.

/s/ Shams Q. Najm 10-30-06
SHAMS Q. NAJM

P.S. Albert C. Nicholson Attorney At Law (562) 467 8911 18000 Studebaker Road Suite 700 Cerritos, California 90703 referred Attorney Henrich. Attorney Henrich assigned Attorney Gina Lewis to handle my case. During the time she represented me communications broke off when she dropped me without notice. Calls to her office number were not returned. They showed no professional courtesy in abandoning me out on a limb. By the time Attorney Henrich entered the case he did not know anything about it.

[SEAL] **THE STATE BAR OF CALIFORNIA**

1149 South Hill Street
Los Angeles, California
90015-2299
Telephone: (213) 765-1000

Dear Complaining Witness:

In order to help us evaluate and process your complaint, please complete the attached Informal Complaint form and provide as many of the following items as possible:

- A copy of any retainer agreement which you might have in writing from the attorney. If there was no written agreement, please explain what your understanding was as to how and when the attorney was to be paid for fees, costs, etc.
- Copies of the front and back sides of all cancelled checks and/or copies of receipts you have showing payments made by you to the attorney.
- Copies of all correspondence between you and the attorney.
- A written explanation of the exact nature of your complaint. Explain what the Attorney did or did not do that forms the basis of your complaint.
- The last date you were in contact with the attorney and what occurred at that time.
- The title of the case, the case number, and the name of the court. (For example: Smith vs. Jones, Case No. 1234, Los Angeles Superior Court.)

- Copies of any pertinent court documents in your possession.

- If you have hired a new attorney, please provide his or her name, address and telephone number.

- Your daytime telephone number.

- The number of attorneys in the law firm complained about. 1 for solo practitioner, 2-10 for small law firm and 11 + for large law firm. If you don't know, state "don't know."

- When providing documents to the State Bar, please send *copies only.* All documents received, whether originals or copies, become the property of the State Bar and are subject to future destruction.

Thank you for your cooperation.

THE STATE BAR OF CALIFORNIA
Office of the Chief Trial Counsel

THE STATE BAR OF CALIFORNIA

COMPLAINT FORM

Read reverse side before filing in this form.

Date Oct. 30, 2006

(1) Your name and address

SHAMS Q. NAJM, 5586 Village Green, Los Angeles, Ca 90016

(2) Telephone number:

Residence (323) 299-1154 **Work** (213) 893-5369

(3) The name, address and telephone number of the attorney being complained about. (See note below.)

Attorney John Henrichs, State Bar No. 140205
835 Wilshire Blvd., Suite 300, Los Angeles, CA 90017,
(213) 239-0505

(4) Have you or a member of your family complained about this attorney previously?

Yes ___, No X. If yes, please state to whom the previous complaint was made, its approximate date and disposition.

(5) Did you employ the attorney? Answer yes or no and, if "yes," give the approximate date you employed him or them and the amount, if any, paid to him.

Yes, 01-31-03 $1,500; 4-20-04 $7,579.55 Total: $9,079.55

(6) If your answer to 5 above is "no," what is your connection with the attorney? Explain briefly.

N/A

(7) Write out on a separate piece of paper and send with this form a statement of what the attorney did or did not do that you are complaining about. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney, state what you employed him to do. Sign and date such separate piece of paper. Further information may be requested. (Attach copies of pertaining documents.)

(8) If your complaint is about a law suit, answer the following, if known:

(a) Name of court (For example, Superior Court or Municipal – in what county)

Superior Court Los Angeles County, transferred for hearing to Superior Count of the County of Orange, County of Orange, Santa Ana, CA.

(b) Title of the suit (For example, Smith against Jones):

Najm v. County of Los Angeles, Los Angeles County Superior Court

(c) Number of the suit BC 294436

(d) Approximate date the suit was filed

April 22, 2003

(e) If you are not a party to this suit, what is your connection with it? Explain briefly.

(9) Size of law firm complained about (*)

1 Attorney ____ 2-10 Attorneys _X_ 11+ Attorneys ____
Don't know____ Govt Attorney ____

NOTE: If you are complaining about more than one attorney, write out the information about each in answer to questions 3 through 8 above on separate sheets if necessary.

Mail to:
Office of the Chief Trial Counsel/Intake
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

(*) Section 6095.1 of the Business and Professions Code mandates that the State Bar compile statistics concerning the size of the attorneys law firm – solo practitioner, small law firm (2-10 attorneys and large law firm (11 + attorneys).

Signature /s/ Shams Q. Najm
SHAMS Q. NAJM

OFFICE OF CHIEF TRIAL COUNSEL/INTAKE
The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

[POSTMARK Nov. 2, 2006]

Shams Q. Najm
Name

5586 Village Green
Street

Los Angeles	CA	90016-5109
City	State	Zip

We have received your complaint against a California attorney and have assigned it the number shown below. We will contact you when our evaluation of your matter is complete.

Thank you for your patience.

OFFICE OF CHIEF TRIAL COUNSEL/INTAKE

Inquiry #06-27681

HENRICHS LAW FIRM, P.C.
ATTORNEY-CLIENT FEE AGREEMENT

This Attorney-Client Fee Agreement ("Agreement"), dated as of January 31, 2003 is between the Henrichs Law Firm, P.C. ("HLF") and Shams Najm, (the "client"), whose address is 5586 Village Green, Los Angeles, CA 90016 and phone number is (323) 299-1154.

1. CONDITIONS. This Agreement will not take effect, and HLF will have no obligation to provide legal services, until you sign, date and return to us a copy of this Agreement, together with (a) the retainer referred to in paragraph 4 below, and (b) a waiver of conflicts letter in such form and substance as HLF shall determine, should HLF deem either of these items necessary.

2. SCOPE OF SERVICES. You are hiring us as your attorneys to represent you initially with regard to an employment matter and with regard to other business and/or litigation matters that may arise from time to time. It is our understanding that HLF will represent you only with respect to these matters. HLF retains the right to assign the work to be done for the client to any attorney employed by HLF. During the course of our representation of you, HLF may initially be required to evaluate the material documents and agreements relating to the issues.

These matters may require us, in the course of our representation of you to, among other items, (i) engage in various conferences, on the telephone or in person with you, as well as accountants and other counsel; (ii) engage in conversation and correspondence; (iii) draft statements and other necessary forms and documents; and (iv) draft various letters, memoranda etc. that relate to such matters herein above described.

In any event, HLF will endeavor to provide you with the legal documentation, counsel and services reasonably required to represent you and to accomplish the goals and objectives that have been communicated to us as business goals and objectives. In that regard, HLF will take reasonable steps to keep you informed of our progress and to respond to your inquiries. Unless HLF enters into a different agreement with you in writing, this Agreement will govern all future services HLF may perform for you.

3. CLIENT'S DUTIES. You agree to be truthful with us, to cooperate, to keep us informed of developments, to abide by this Agreement and to pay our bills on time.

4. LEGAL FEES/DEPOSIT. HLF will provide legal services at the rate set forth on the attached Rate Schedule, and bill you regularly for such services performed. HLF will require an initial retainer of $1,500.00.

HLF does not provide any guarantee of an ultimate fee, however consistent with our firm philosophy, HLF shall endeavor to provide the requisite work product for as small an ultimate fee as HLF can without compromising our legal services. In any event, if any billing problems arise, please let us know so that HLF may discuss with you the problems and correct your billing invoice.

There will be no minimum fee payable for our agreement to represent you. If from time to time you give us a deposit (including any advances or retainers), our fees and expenses will be credited against the initial and any subsequent deposits HLF receives from you. All such deposits will be held in a trust account. You authorize us to use that fund to pay the fees and other charges you incur. Any unused deposit at the conclusion of our services will be refunded.

5. LEGAL FEES AND BILLING PRACTICES. Subject to paragraph 4 above, you agree to pay our prevailing rates for time spent on your matter by us or other of our legal personnel. Our current rates for legal personnel (and other billing rates) are set forth on the attached Rate Schedule. Rates may be changed from time to time and such change in rate will constitute a modification of this Agreement.

HLF will charge you for the time HLF spends on telephone calls relating to your matter, including calls with you or other persons regarding your matter. The legal personnel assigned to your matter will confer among themselves about the matter, as required. When they do confer, each person will charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting or other proceeding, each will charge for the time spent. HLF will charge for travel time and expenses, both local and out of town.

6. COSTS AND OTHER CHARGES. HLF may incur various costs and expenses in performing legal services under this Agreement. You agree to pay for those costs and expenses in addition to the hourly fees, subject to paragraph 4 above. The costs and expenses commonly include parking, courier and express mail services, document preparation, photocopying and other reproduction costs, telephone, telecopy, various state and federal filing fees, and other similar items. Except for the items listed on the Rate Schedule, all costs and expenses will be charged at our cost which may change from time to time as our costs increase.

7. BILLING STATEMENTS. HLF will send the you periodic statements for fees-and costs incurred which statements will include a description of specific services rendered, who rendered them and the amount of time

spent and an itemization of costs. All legal fees, costs and expenses incurred regarding your matters are due upon your receipt of a billing statement from us. You may request a statement at intervals of no less than thirty (30) days. If a request for a statement is received, HLF will provide one within ten (10) days following the request unless HLF has provided a bill to you within thirty-one (31) days prior to the request, in which case HLF will provide a bill to you no later than thirty-one (31) days following the date the most recent bill was provided.

8. DISCHARGE AND WITHDRAWAL. You may discharge us at any time. HLF may withdraw at any time in accordance with the California Rules of Professional Conduct with your consent or for good cause. Good cause includes your breach of this Agreement, your refusal to cooperate with us or to follow our advice on a material matter or any fact or circumstance that would render our continuing representation unlawful or unethical or which could subject us to liability.

When our services conclude, all unpaid charges will immediately become due and payable. After our services conclude, HLF will, upon your request, deliver your file to you, along with any funds or property of yours in HLF's possession.

9. DISCLAIMER OF GUARANTEE. Nothing in this Agreement and nothing in our statements to you will be construed as a promise or guarantee about the outcome of your matter. HLF makes no such promises or guarantees. Our oral comments to you about the outcome of your matter are expressions of our good faith belief and expectation only.

10. ATTORNEYS' FEES. Should any proceeding, including mediation and/or arbitration be initiated to enforce the terms of this agreement, the prevailing party shall also be entitled to expenses incurred, including collection agency fees, reasonable attorney's fees and costs incurred in such proceedings. In case of any dispute, the parties agree that all proceedings will be initiated and conducted in Los Angeles, California.

11. EFFECTIVE DATE. This Agreement will take effect as provided in Paragraph 1, but its effective date will be retroactive to the date HLF first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, you will be obligated to pay us the reasonable value of any services HLF may have performed for you.

12. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. BINDING EFFECT. This Agreement shall be binding upon, and inure to the benefit of, the parties successors and assigns.

I have read and understand the foregoing terms and those set forth on the attached Rate Schedule and agree to them, as of the date the Henrichs Law Firm, P. C. first provided services.

SHAMS NAJM

Dated: January 31, 2003 By: /s/ Shams Q. Najm

HENRICHS LAW FIRM, P.C.

Dated: January 31, 2003 By: /s/ John Henrichs
John Henrichs

HENRICHS LAW FIRM, P.C.
2003 RATE SCHEDULE

A. Identification

Client: Shams Najm
Matter: As described in Paragraph 2 above.

B. Hourly rates for legal personnel

Partners	$ 200.00
Associates	$ 175.00
Law Clerks/Paralegal	$ 75.00
Contingency	N/A

C. Standard Charges

We charge for our time in minimum units of .1 hours.

D. Costs and Expenses

In-office photocopying	$0.10/page
Mileage	$0.31/mile
Computerized legal research	Actual costs incurred
Various (filing fee, court costs, courier costs, etc.)	Actual costs incurred

Henrichs Law Firm, P.C.
835 Wilshire Boulevard, Suite 300
Los Angeles, CA 90017
(213) 239-0500
Tax Id. No.: 95-4876506

Page: 1

Najm, Shams
5586 Village Green
Los Angeles CA 90016

March 17, 2004
Count No: 119-001
Statement No: 1935

Najm v. Superior Court

~~We appreciate the opportunity to be of service to you.~~

Legal Services Rendered Through

		Hours	
01/31/03 JDH	(No Charge) Meet with client re: case facts; telephone call with EEOC investigator re: file.		0.00
	* * *		
12/09/03 GRL	Telephone conference with Najm re: letter from supervisor, Welch; research Najm intends to do to present to judge; trying to get facts for defendants' summary judgment motion; has written Washington so they can investigate; notes to file	0.30	52.50
	* * *		

12/23/03 GRL	Review and analyze letter of reference from Legal Aid Society of Orange County for Shams Najm; Najm's letter to supervisor requesting information on position	0.10	17.50
	* * *		
02/10/04 JDH	Meet with client re his concerns with *Motion for Summary Judgment*	0.20	40.00
02/12/04 JDH	Phone call with opposing counsel confirm client's deposition schedule.	0.10	20.00
02/13/04 JDH	Travel to and from and attended client's deposition.	5.00	1,000.00
	* * *		

Total Advances	297.74
Total Current Work	9,079.55
Balance Due by 04/16/04	$9,079.55

Your trust account #2 balance is

	Opening Balance	$0.00
01/31/03	Retainer	1,500.00
	Closing Balance	$1,500.00
	Please Remit	$9,079.55

1023

SHAMS Q NAJM
5586 VILLAGE GREEN (323) 299-1154
LOS ANGELES, CA 90016

Date 01-31-03

16-66/1220
2362

Pay to the Order of Attorney John Henrich's $1,500

One thousand & Five Hundred — Dollars

Bank of America.
Baldwin Hills Village
3615 S La Brea Ave
Los Angeles CA
323 730 9040

Customer Since 1986

For Retainer / Law Suit

Shams Q Najm

⑆122000661⑆ 1023 236 23 0108

BEST AVAILABLE COPY

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*):	*FOR COURT USE ONLY*
John Henrichs, SBN 140205 HENRICHS LAW FIRM, P.C. 835 Wilshire Boulevard, Suite 300 Los Angeles, California 90017 TELEPHONE NO.: (213) 239-0500 FAX NO.: (213) 239-0329 ATTORNEY FOR (*Name*): Plaintiff, Shams Q. Najm	
NAME OF COURT: COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, California 92702-1994 BRANCH NAME: CENTRAL JUSTICE CENTER	
CASE NAME: Najm v. County of Los Angeles, et. al.	CASE NUMBER: BC294436
NOTICE OF MOTION AND MOTION TO BE RELIEVED AS COUNSEL – CIVIL	HEARING DATE: DEPT.: C25 TIME: BEFORE HON.: David R. Chaffee DATE ACTION FILED: TRIAL DATE: May 17, 2004

TO (*name and address of client*): Shams Q. Najm, 5586 Village Green, Los Angeles, CA 90016

1. PLEASE TAKE NOTICE that (*name of withdrawing attorney*): Henrichs Law Firm moves under California Code of Civil Procedure section 284(2) and California

Rules of Court, rule 376, for an order permitting the attorney to be relieved as attorney of record in this action or proceeding.

2. A hearing on this motion to be relieved as counsel will be held as follows:

a. Date:	Time:	Dept.:	Room:

b. The address of the court: ☒ same as noted above ☐ other (*specify*):

3. This motion is supported by the accompanying declaration, the papers and records filed in this action or proceeding, and the following additional documents or evidence (*specify*):

(*this motion does not need to be accompanied by a memorandum of points and authorities. Cal. Rules of Court, rule 376(b).)*

4. The client presently represented by the attorney is

a. ☒ an individual.
b. ☐ a corporation.
c. ☐ a partnership.
d. ☐ an unincorporated
e. ☐ association.
f. ☐ a guardian.
a conservator.
g. ☐ a trustee.
h. ☐ a personal represen-
☐ tative.
i. ☐ a probate fiduciary.
j. ☐ a guardian ad litem.
k. other (*specify*):

NOTICE TO CLIENT

If this motion to be relieved as counsel is granted, your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- A guardian
- A personal representative
- A guardian at litem
- A conservator
- A probate fiduciary
- An unincorporated association
- A trustee
- A corporation

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

5. If this motion is granted and a client is representing himself or herself, the client will be solely responsible for the case.

NOTICE TO CLIENT
WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, you will not have an attorney representing you. You may wish to seek legal assistance. If you do not have a new attorney to represent you in this action or proceeding, and you are legally permitted to do so, you will be representing yourself. It will be your responsibility to comply with all court rules and applicable laws. If you fail to do so, or fail to appear at hearings, action may be taken against you. You may lose your case.

6. If this motion is granted, the client must keep the court informed of the client's current address.

NOTICE TO CLIENT
WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, the court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

Date: 4/4/04

John Henrichs
(TYPE OR PRINT NAME)

/s/ John Henrichs
(SIGNATURE OF ATTORNEY)
Attorney for (*name*):
Plaintiff, Shams Q. Najm

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*):	*FOR COURT USE ONLY*
Henrichs Law Firm John Henrichs, SBN 140205 HENRICHS LAW FIRM, P.C. 835 Wilshire Boulevard, Suite 300 Los Angeles, California 90017 TELEPHONE NO.: (213) 239-0500 FAX NO.: (213) 239-0329 ATTORNEY FOR (*Name*): Plaintiff, Shams Q. Najm	

NAME OF COURT: SUPERIOR COURT OF CALIFORNIA STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: CENTRAL DISTRICT	
CASE NAME: Najm v. County of Los Angeles	CASE NUMBER: BC294436
DECLARATION IN SUPPORT OF ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL – CIVIL	HEARING DATE: DEPT.: C25 TIME: 2:00 BEFORE HON.: David R. Chaffee DATE ACTION FILED: April 22, 2003 TRIAL DATE: May 17, 2004

1. **Attorney and Represented Party.** Attorney (*name*): Henrichs Law Firm is presently counsel of record for (*name of party*): Plaintiff, Shams Q. Najm in the above-captioned action or proceeding.

2. **Reasons for Motion.** Attorney makes this motion to be relieved as counsel under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1) for the following reasons (*describe*): A serious breakdown in communications recently occurred during the week of March 29, 2004 and April 2, 2004 between the plaintiff and myself. This problem has resulted in the plaintiff informing me on or about April 8, 2004 that he is looking for counsel to replace me. I concur with that decision. I asked the plaintiff when he expected to find new counsel and he said within the next two weeks. I informed the plaintiff that because the trial date was approaching that I

would file a motion to be relieved as counsel to ensure my substitution out of the case prior to the trial. I informed the plaintiff that if he finds new counsel prior to the hearing on the motion that he could substitute in new counsel and the hearing would be moot.

☒ Continued on Attachment 2.

3. **Service**

a. Attorney has

(1) ☐ personally served the client with copies of the motion papers filed with this declaration. A copy of the proof of service will be filed with the court at least 5 days before the hearing.

(2) ☒ served the client by mail at the client's last known address with copies of the motion papers served with this declaration.

b. if the client has been served by mail at the client's last known address attorney has

(1) ☒ confirmed within the past 30 days that the address is current

(a) ☐ by mail, return receipt requested.

(b) ☒ by telephone.

(c) ☒ by conversation.

(d) ☐ by other means (*specify*):

3. b. (2) ☐ been unable to confirm that the address is current or to locate a more current address for the client after making the following efforts.

(a) ☐ mailing the motion papers to the client's last known address, return receipt requested.

(b) ☐ calling the client's last known telephone number or numbers.

(c) ☐ contacting persons familiar with the client (*specify*):

(d) ☐ conducting a search (*describe*):

(e) ☐ other (*specify*):

c. Even if attorney has been unable to serve the client with the moving papers, the court should grant attorney's motion to be relieved as counsel of record (*explain*):

4. The next hearing scheduled in this action or proceeding

(a) ☐ is not yet set.

(b) ☒ is set as follows (*specify the date, time, and place*): April 20, 2004, at 2:00 p.m. in Department C25

(c) ☒ concerns (*describe the subject matter of the hearing*): Motion for Summary Judgment

☐ Continued on Attachment 5.

5. The following additional hearings and other proceedings (including discovery matters) are presently scheduled in this case (*for each, describe the date, time, place, and subject matter*): Trial – May 17, 2004, Department C25

☐ Continued on Attachment 4.

6. Trial in this action or proceeding

   (a) ☐ is not yet set.

   (b) ☒ is set as follows (*specify the date, time, and place*): May 17, 2004, Department C25

7. **Other.** Other matters that the court should consider in determining whether to grant this motion are the following (*explain*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: April 9, 2004

John Henrichs	/s/ John Henrichs
(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)

8. Number of pages attached: 1

In addition to the break down in communication, the plaintiff has breached the hourly retainer agreement, by not paying my bill. The plaintiff paid me a small initial retainer a year ago He has not paid me anything more on his account despite numerous requests to be paid for the work that I have done for him. My firm has experienced a lull in business that resulted in the loss of half of my associates and staff. Unfortunately, I am not in the position to work for the plaintiff and not get paid. Any more work on this case that does not result in payment will have a sever negative impact on my ability to stay in business.

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*):	*FOR COURT USE ONLY*
Henrichs Law Firm John Henrichs, SBN 140205 HENRICHS LAW FIRM, P.C. 835 Wilshire Boulevard, Suite 300 Los Angeles, California 90017 TELEPHONE NO.: (213) 239-0500 FAX NO. (OPTIONAL): (213) 239-0329 E-MAIL ADDRESS (*optional*): ATTORNEY FOR (*Name*): Plaintiff, Shams Q. Najm	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civil Center Drive West CITY AND ZIP CODE: Santa Ana, California 92702-1994 BRANCH NAME: Central Justice Center	
CASE NAME: Najm v. County of Los Angeles, et. al.	CASE NUMBER: BC294436
ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL CIVIL	HEARING DATE: DEPT.: C25 TIME: BEFORE HON.: David R. Chaffee DATE ACTION FILED: April 22, 2003 TRIAL DATE: May 17, 2004

1. The motion of (*name of attorney*): Henrichs Law Firm to be relieved as counsel of record for (*name of client*):

Plaintiff, Shams Q. Najm a party to this action or proceeding, came on regularly for hearing at the date, time, and place indicated above.

2. The following persons were present at the hearing:

FINDINGS

3. Attorney has

   a. ☐ personally served the client with papers in support of this motion.

   b. ☒ served client by mail and submitted a declaration establishing that the service requirements of California Rules of Court, rule 376, have been satisfied.

4. Attorney has shown sufficient reasons why the motion to be relieved as counsel should be granted and why the attorney has brought a motion under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1).

ORDER

5. Attorney is relieved as counsel of record for client

   a. ☒ effective upon the filing of the proof of service of this signed order upon the client.

   b. ☐ effective on (*specify date*):

6. The client's ☒ current ☐ last known address and telephone number: 5586 Village Green Los Angeles, CA 90016, (323) 299-1154

   If the client's current address is known, service on the client must hereafter be made at the address unless

otherwise ordered in item 13. If the current address is not known, service must be made according to Code of Civil Procedure section 1011(b) and rule 202.5 of the California Rules of Court.

7. a. The next scheduled hearing in this action or proceeding is set for (*Date, time, and place*): April 20, 2004, 2:00, C25

   b. The hearing will concern (*subject matter*): Defendant's Motion for Summary Judgment

NOTICE TO CLIENT

You or your new attorney, if any, must prepare for and attend this hearing.

Page 1 of 2

8. The following additional hearings and other proceedings (including discovery matters) are set in this action (*describe the date, time, place, and subject matter of each*): May 17, 2004 – Trial

9. The trial in this action or proceeding:

   a. ☐ is not yet set.

   b. ☒ is set for (*specify the date, time, and place*): May 17, 2004, Department C25

10. Client is hereby notified of the following effects this order may have upon parties.

NOTICE TO CLIENT

Your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- A guardian
- A personal representative
- A guardian at litem
- A conservator
- A probate fiduciary
- An unincorporated association
- A trustee
- A corporation

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

11. Client is notified that, if the client will be representing himself or herself, the client shall be solely responsible for the case.

NOTICE TO CLIENT
WHO WILL BE UNREPRESENTED

You will not have an attorney representing you. You may wish to seek legal assistance. If you do not have a new attorney to represent you in this action or proceeding, and you are legally permitted to do so, you will be representing yourself. It will be your responsibility to comply with all court rules and applicable laws. If you fail to do so, or fail to appear at hearings, action may be taken against you. You may lose your case.

12. Client is notified that it is the client's duty to keep the court informed at all times of the client's current address.

VOID AFTER 90 DAYS

11-35/1210 **2016803798**

Bank of America

Issuer: Bank of America, N.A., San Francisco, California

MATCH THE AMOUNT IN WORDS WITH THE AMOUNT IN NUMBERS

BANK OF AMERICA SEVEN SEVEN NINE 7,579 55 CISCIS

SN - 2016803798 B-2362 T-A ROCHA #4

***

NOTICE TO CLIENT
WHO WILL BE UNREPRESENTED

The court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

13. The court further orders (*specify*):

Date:

JUDGE OR JUDICIAL OFFICER

(*PRINT THE FOLLOWING INFORMATION*)

NAME Shams Q. Najm DATE 05/30/02 Thurs.
(First) (M.I.) (Last)

STREET ADDRESS: 5586 Village Green ZIP CODE 90016

CITY Los Angeles STATE CA COUNTY Los Angeles

PHONE NUMBERS
Home: (323) 299-1154 Work: (213) 351-5171

SOCIAL SECURITY # ____ - ___ - ____

DATE OF BIRTH: 04 / 05 / 1945
mo. day yr.

SEX: (X) Male ( ) Female

RACE: ( ) Alaskan Native/Asian/Pacific Islander
( ) American Indian
(X) Black
( )White

NATIONAL ORIGIN: ( ) Mexican ( ) Hispanic
( ) East Indian
( ) Other ____ -

*(please provide the following for a contact person at a **different address** whom we can contact if we are unable to contact you)*

CONTACT PERSON NAME Diane, E. Watson
Ms. Johnetta F. Gayles
(First) (Last)

PHONE NO. (323) 292-1165 (323) 299-1154

STREET ADDRESS: (same as above) ZIP ~~90016~~
5100 Gold Leaf Circle CODE 90056

same as
above

CITY Los Angeles STATE CA 90056

I believe I was discriminated against by: (check all those that apply)

( ) Employer ( ) Union Local No. ___ ( ) Employment Agency (X) Other

Company Name	John A. Clarke, Executive Officer/Clerk The Superior Court	Company Name	_____
Address	111 North Hill Street	Address	_____
Zip, City, State	Los Angeles, CA 90012	Zip, City, State	_____
Telephone Number	Ms. Jennifer Revuelta & Don Heuman/ Cynthia A. Banks (213) 974-5444 (213) 974-5136	Telephone Number	_____
County	___# of Employees ___	County	__# of Employees __
Type of Business	Legal Business	Type of Business	_____

EMPLOYMENT DATA: Date of Hire ___/___/___ Job Title at Hire _____

Job Title/Salary at Time of Discrimination Probate Investigator/Superior Court

Full Name and Job Title of Immediate Supervisor _____

Provide Date the Illegal Discrimination started: _____

Give the Name and Job title of the Person(s) You Believe Discriminated Against You: Ms. Jennifer Revuelta/Don Heuman/Cynthia Banks/John A. Clark

I Believe the Action(s) Taken Against Me was Based on My:

(X) Race

( ) Color _____

( ) National Origin
(*Provide the name of your National Origin*)

( ) Religion _____
(*Provide the name of your religion*)

( ) Sex (X) Age (40 OR OLDER)

( ) Retaliation (*see definition of Retaliation on page 1*)

( ) Disability _____

(X) Other Most Qualified for the position
(*Describe definition of "Other"*)

***CHECK ONLY* those that apply and give the date for each item checked**

Issue(s)		Date	Issue(s)		Date
Hire Application	(X)	08/09/01	Benefits	( )	
Transfer	( )		Provide Maternity Benefits	( )	
Reinstate	( )		Harassed	( )	
Recall	( )		Sexually Harassed	( )	
Fired	( )		Unequal Pay	( )	
Laid Off	( )		Demoted	( )	
Forced to Retire	( )		Disciplined	( )	
Forced to Resign	( )		Accommodation (*Disability or religion*)	( )	

I SWEAR OR AFFIRM THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

/s/ Sham Q. Najm	05/30/02
SIGNATURE	DATE

*I READ THE PRIVACY ACT STATEMENT ON THE BACK OF THE PRE-CHARGE INSTRUCTIONS***

Equal Employment Opportunity Commission

DISMISSAL AND NOTICE OF RIGHTS

To:	**From:**
Shams Najm 5586 Village Green Los Angeles, CA 90016	Equal Employment Opportunity Commission 255 E. Temple Street, 4th Floor Los Angeles, CA 90012

[ ] *On behalf of a person aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	**EEOC Representative**	**Telephone No.**
340A202006	**Legal Officer of the Day**	**(213) 894-1000**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

[ ] The facts you alleged fail to state a claim under any of the statutes enforced by the EEOC.

[ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.

[ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

[ ] We cannot investigate your charge because it was not filed within the time limit required by law.

[ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

[ ] While reasonable efforts were made to locate you, we were not able to do so.

[ ] You had 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

[ ] Other (*briefly state*) _____

– NOTICE OF SUIT RIGHTS –

(*See the additional information attached to this form.*)

[X] **Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may pursue this matter further by bringing suit in

federal or state court against the Respondent(s) named in the charge. **If you decide to sue, you must sue *WITHIN 90 DAYS* from your receipt of this Notice.** Otherwise your right to sue based on the above-numbered charge will be lost.

[ ] **Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred *more than 2 years (3 years)* before you file suit may not be collectible.** (If you file suit, please send a copy of your court complaint to this office.)

On behalf of the Commission

/s/ Rosa Viramontez 8/30/02

Olophius E. Perry, (*Date Mailed*)
District Director
Los Angeles District Office

CHARGE OF DISCRIMINATION	AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.	☐ FEPA ☒ EEOC	340A202006

CA Dept. Fair Employment & Housing and EEOC
State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*	HOME TELEPHONE *(Include Area Code)*
Mr. Shams Q. Najm	Redacted

STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
5586 Village Green, Los Angeles, CA 90016	04/05/1945

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE *(Include Area Code)*
County Of Los Angeles, Superior Court	Cat D (501 +)	(213) 974-5136

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY
111 North Hill Street, Los Angeles, CA 90012	037

NAME	TELEPHONE NUMBER *(Include Area Code)*

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*	DATE DISCRIMINATION TOOK PLACE *EARLIEST* *LATEST*
☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER *(Specify)*	08/22/2001 08/22/2001 ☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

I. On August 22, 2001, I was denied hire into the position of Investigator assigned to the Probate Court.

II. The reason given by Jennifer Revuelta, Recruitment and Section Unit, for the denial of hire was that I did not meet the minimum qualifications for the position.

III. I believe that I have been discriminated against by being denied hire because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – (When necessary for State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

05/30/02 /s/ Shams Q. Najm
Date Charging Party *(Signature)*

	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)

CALIFORNIA STATE AND
CONSUMER SERVICES AGENCY

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

(ADDRESS CHECKED BELOW)

[Addresses Omitted In Printing]

John Clark, Executive Officer/Clerk
County of Los Angeles Superior Court
111 North Hill Street
Los Angeles, CA 90012

EEOC Number:	3A0-A20-2006
Case Name:	Shams Najm
Date:	05/30/02

NOTICE TO COMPLAINANT AND RESPONDENT

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

No response to the DFEH is required by the respondent.

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to the Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior, Municipal or Justice Court. The civil action must be filed within one year of this letter. This right may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,

/s/ Barbara J. Osborne
Barbara J. Osborne
Deputy Director
Enforcement Field Operations

CHARGE OF DISCRIMINATION	AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.	☐ FEPA ☒ EEOC	340A202006

CA Dept. Fair Employment & Housing and EEOC
State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*	HOME TELEPHONE *(Include Area Code)*
Mr. Shams Q. Najm	Redacted

STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
5586 Village Green, Los Angeles, CA 90016	04/05/1945

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE *(Include Area Code)*
County Of Los Angeles, Superior Court	Cat D (501 +)	(213) 974-5136

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY
111 North Hill Street, Los Angeles, CA 90012	037

NAME	TELEPHONE NUMBER *(Include Area Code)*

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*	DATE DISCRIMINATION TOOK PLACE *EARLIEST* *LATEST*
☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ RETALIATION ☒ AGE ☐ DISABILITY ☐ OTHER *(Specify)*	08/22/2001 08/22/2001 ☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

AMENDED

I. On August 22, 2001, I was denied hire into the position of Investigator assigned to the Probate Court.

II. The reason given by Jennifer Revuelta, Recruitment and Section Unit, for the denial of hire was that I did not meet the minimum qualifications for the position.

III. I believe that I have been discriminated against by being denied hire because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended, and age 57, in violation of the Age Discrimination in Employment Act of 1967, as amended.

I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – (When necessary for State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. 08/24/02 /s/ Shams Q. Najm Date Charging Party *(Signature)*		
	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)	

LOS ANGELES SUPERIOR COURT

EMPLOYMENT OPPORTUNITY

Open to the Public

INVESTIGATOR

MONTHLY **EXAM NO.: C9754C**

SALARY: **$3,678.18 – $5,088.73 (Effective July 1, 2001)**
Additional monthly compensation includes up to $523 in taxable cash to buy medical benefits and $70 transportation allowance for assignments in downtown Los Angeles.

FILE BY: **JULY 13, 2001**

POSITION DESCRIPTION:

Under the direction of the Principal Counselor, the incumbent is responsible for investigating conservatorship and guardianship cases assigned to the Probate Court. As an officer of the Court, the incumbent communicates, assesses, and works with persons who are or will be the subject of a conservatorship or guardianship. Investigators prepare written reports of findings along with recommendations for the Probate Court.

EXAMPLES OF DUTIES:

- Interviews prospective conservatees for the Probate Court and advises them of their right to attend, oppose proceeding, and have counsel present.
- Reports to the court on the proposed conservatee's living arrangements and the cost to maintain such arrangements and offers a professional opinion regarding the conservatee's physical and mental capabilities.

- Reviews conservatorships on an annual and bi-annual basis and forwards any requests for change of conservators or termination of the conservatorship to the court.
- Reviews reports completed by conservators and makes recommendations to the court regarding their proposals and statements.
- Conducts investigations on guardianship cases at the time the petition is filed.

SELECTION REQUIREMENTS:

Graduation from an accredited college with a Bachelor's Degree in social work, psychology, gerontology, education, nursing or other closely related field. (*Copies of school transcripts or diploma confirming successful completion of the required education must be submitted at the time of filing.*) **-AND-** Three years' experience performing field investigations as a probation or parole officer, social worker, or other closely related occupation **-AND-** One year of field experience working with dependent and elderly adults and/or children. **-AND-** Demonstrated proficiency working with computers including Word and/or WordPerfect software to prepare clear and concise written reports.

License: At the time of appointment candidate must have a valid California Class "C" Driver's License and use of private transportation to travel throughout Los Angeles and neighboring counties. Reimbursable mileage averages 500 or more miles per month.

DESIRABLE QUALIFICATIONS:

- Experience dealing with people in locked or secured board and care facilities.

- Knowledge of medical terminology, including understanding medical diagnosis and various types and effects of prescription drugs.
- Ability to interview children and assess their needs.
- Ability to interview and communicate with a variety of people from different backgrounds. Fluency in Spanish, in addition to English.

EXAMINATION INFORMATION:

Part I – A qualifying evaluation of education, training and experience based on the submitted application materials. Only the most qualified applicants, based on results from PART I, will be invited to PART II.
Note: All applicants meeting the minimum requirements are not guaranteed advancement to the interview phase of the examination.

Part II – An interview, weighted 100%, covering experience, technical knowledge, critical analytical ability, and the general ability to perform the duties of the position.

LOS ANGELES
SUPERIOR COURT
CLASSIFICATION SPECIFICATION

CLASSIFICATION TITLE: INVESTIGATOR

DEFINITION: Conducts investigations of conservatorship and guardianship cases assigned to the Probate Court.

CLASSIFICATION STANDARDS: Positions allocable to this class report to the Senior Investigator, SC, and are responsible for investigating conservatorship and guardianship cases assigned to the Los Angeles Superior Court's Probate Court. Incumbents must exercise a thorough knowledge of and ability to analyze and interpret probate law and legislation.

EXAMPLES OF DUTIES:

- Interviews prospective conservatees for the Probate Court and advises them of their right to attend, to oppose the proceeding, and to have counsel present.
- Reports to the court on the proposed conservatee's living arrangements and the cost to maintain such arrangements and offers a professional opinion regarding the conservatee's physical and mental capabilities.
- Reviews conservatorships on an annual and biennial basis and forwards any requests for change of conservators or termination of the conservatorship to the court.
- Reviews reports completed by conservators and makes recommendations to the court regarding their proposals and statements.

– Conducts investigations on guardianship cases at the time the petition is filed.

MINIMUM REQUIREMENTS: Graduation from an accredited college with a degree in social science, psychology, or other related field **-AND-** Three years' experience performing field investigations as a probation or parole officer, law enforcement officer, or social worker.

LICENSE: California Class "C" Driver's License

PHYSICAL CLASS: "2" Light

ITEM NO.: 9754

Approved: 03/26/93

[SEAL]

Los Angeles Superior Court
Employment Application
http://www.lasuperiorcourt.org
Job Hotline (213) 974-5444
Please refer to page 3 for office locations.
Equal Opportunity Employer

FOR HUMAN RESOURCES USE ONLY		
	• ACCEPTED	• NOT ACCEPTED
REASON:	1. • Education	6. • Late Filing
	2. • Experience	• Other
Analyst: _____		Date: _____

Please complete all sections regardless of whether or not you attach a resume. Type or print the information on this form.	
1. EXAMINATION TITLE: INVESTIGATOR	2. EXAMINATION NUMBER: C9754C
3. YOUR NAME: LAST FIRST MI NAJM, SHAMS, Q.	4. SOCIAL SECURITY NUMBER: **Redacted**
5. OTHER NAMES USED IN EMPLOYMENT: LAST FIRST MI GAYLES, EDWARD, R. JR.	
6. ADDRESS: NUMBER STREET 5586 VILLAGE GREEN	7. HOME PHONE: **Redacted**

CITY STATE ZIP LOS ANGELES, CALIFORNIA 90016	MESSAGE PHONE: **Redacted**

8. DO YOU☐ SPEAK ☐ READ ☐ WRITE ANY LANGUAGE OTHER THAN ENGLISH FLUENTLY?
☐ YES ☒ NO

IF 'YES,' INDICATE LANGUAGES:

9. ARE YOU NOW OR HAVE YOU EVER BEEN EMPLOYED BY THE COURT/COUNTY OF LOS ANGELES?
.....☒ YES ☐ NO

IF YES, PLEASE COMPLETE:

EMPLOYEE NUMBER:	PAYROLL TITLE:	COURT/ DEPARTMENT NAME:	COURT/ COUNTY DEPT NUMBER:
Redacted	INVESTIGATOR AIDE	PROBATION PRE-TRIAL SERVICES	640

DATES OF SERVICE:	EMPLOYMENT STATUS:
FROM: 08/17/1998 TO: PRESENT	REGULAR ☒ TEMPORARY ☐

10. DO YOU HAVE ANY RELATIVES CURRENTLY EMPLOYED IN THE LOS ANGELES SUPERIOR COURT?
.....☐ YES ☒ NO

IF YES, PLEASE COMPLETE:

NAME:	RELATIONSHIP:	SUPERIOR COURT LOCATION:

11. ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA?.....☒ YES ☐ NO
IF NOT A U.S. CITIZEN, CAN YOU SHOW PROOF OF U.S. GOVERNMENT PERMISSION TO WORK IN THIS COUNTRY?.....☐ YES ☐ NO

12. DO YOU POSSESS A VALID CALIFORNIA DRIVER'S LICENSE? .....☒ YES ☐ NO

DRIVER'S LICENSE NUMBER: K0491973	EXPIRATION DATE: 04-05-06	CLASS: C

13. HAVE YOU AS AN ADULT EVER BEEN, IN ANY COURT OF LAW OR MILITARY COURT, CONVICTED OF A CRIME, FINED (EXCLUDING PARKING CITATIONS AND MINOR TRAFFIC OFFENSES), PLACED ON PROBATION OR GIVEN A SUSPENDED SENTENCE? (DO NOT INCLUDE JUVENILE OFFENSES IF RECORD HAS BEEN SUBSEQUENTLY SEALED BY COURT ORDER.) .....☐ YES ☒ NO

(PLEASE NOTE: A CONVICTION IS NOT AN AUTOMATIC BAR TO EMPLOYMENT; EACH CASE IS CONSIDERED ON ITS MERITS.)

DATE OF CONVICTION	LOCATION OF CONVICTION	DESCRIBE NATURE OF OFFENSE	DISPOSITION

14. HAVE YOU EVER BEEN FIRED OR ASKED TO RESIGN FROM EMPLOYMENT? IF YES, PLEASE ATTACH EXPLANATION .....☐ YES ☒ NO

15. DO YOU CLAIM VETERANS CREDIT? IF YES, ATTACH A COPY OF YOUR DD214 FORM TO THIS APPLICATION .....☐ YES ☒ NO

16. DO YOU GIVE PERMISSION TO CONTACT YOUR CURRENT EMPLOYER AND/OR YOUR PREVIOUS EMPLOYER? .....☒ YES ☐ NO

17. EDUCATION:

HIGH SCHOOL DIPLOMA: ☒ YES ☐ NO ☐ G.E.D. CERTIFICATE	HIGH SCHOOL NAME: SUSAN M. DORSEY HIGH SCHOOL	LOCATION: LOS ANGELES, CA

NAME AND LOCATION OF COLLEGES OR SCHOOLS ATTENDED:	COURSE OF STUDY MAJOR:	ATTENDANCE DATES: FROM:	TO:	DEGREES, CERTIFICATES, UNITS:
STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF LAW BUFFALO, N.Y.	LAW/ LEGAL	SEPT 1970	FEB 1975	J.D./81
VIRGINIA UNION UNIVERSITY RICHMOND, VIRGINIA	SOCIAL SCIENCE	SEPT 1964	MAY 1968	B.A./124
UNIVERSITY OF WEST LOS ANGELES SCHOOL OF PARALEGAL, INGLEWOOD CA	PROBATE ADMINISTRATION	SEPT 1992	MAY 1994	PARALEGAL CERTIFICATE/21

18. EXPERIENCE: Complete all sections regardless of whether or not you attach a resume. Begin with your most recent job then list separately the PAYROLL TITLE for all jobs, volunteer experience, and any periods of unemployment *in the last ten years*. If your application is incomplete, it will be rejected. Experience is evaluated on the basis of a verifiable 40-hour week. If additional space is needed, attach a second sheet.

NAME OF EMPLOYER:	EMPLOYER ADDRESS:
LA COUNTY PROBATION DEPT/PTS – BAIL DEVIATION	500 SHAITO PLACE SUITE #600

POSITION TITLE: INVESTIGATOR AIDE	DESCRIPTION OF DUTIES: A complete criminal history on the defendant is compiled along with police agency comments all of the information is furnished to the on duty Commissioner who makes a decision on the matter of bail.	
DATES EMPLOYED FROM: 08/17/98	TO: PRESENT	
TOTAL MONTHS: 36	HOURS PER WEEK: 40	PART TIME ☐ FULL TIME ☒
CURRENT SALARY: HOURLY ☐ $36,000	MONTHLY ☒	ANNUAL ☐
REASON FOR LEAVING: N/A		NUMBER SUPERVISED: 0
WORK LOCATION/ DIVISION: PROBATION PRE-TRIAL SERVICES 27	NAME OF SUPERVISOR: AL WELCH	PHONE: 213 357-5171
NAME OF EMPLOYER: WISE SENIOR SERVICES	EMPLOYER ADDRESS: 255 SO. HILL STREET ROOM 405	
POSITION TITLE: OMBUDSMAN	DESCRIPTION OF DUTIES: ADVOCATE ON BEHALF OF THE ELDERLY AND DEPENDENT RESIDENTS IN SKILLED – NURSING CARE FACILITIES	
DATES EMPLOYED FROM: NOV. 1991	TO: PRESENT	
TOTAL MONTHS: 116	HOURS PER WEEK: 5	PART TIME ☒ FULL TIME ☐

CURRENT SALARY: HOURLY ☐ VOLUNTEER	MONTHLY ☐	ANNUAL ☐
REASON FOR LEAVING: N/A		NUMBER SUPERVISED: 0
WORK LOCATION/ DIVISION: Fountain Garden Convalescent	NAME OF SUPERVISOR: Amelia Tovar	PHONE: 213 617-8957
NAME OF EMPLOYER: Norwalk Community Legal Services	EMPLOYER ADDRESS: 11834 E. FIRESTONE BLVD.	
POSITION TITLE: PARALEGAL I	DESCRIPTION OF DUTIES: Under the Supervision of An Attorney Interviewed clients, identified legal issues and prepared legal documents in civil cases. I.E. prepared T.R.O., Answers in Eviction proceeding. Represented clients before Social Security Administrative Law Judges	
DATES EMPLOYED FROM: Aug. 30, 1993	TO: Oct. 20, 1995	
TOTAL MONTHS: 26	HOURS PER WEEK: 20-35	PART TIME ☒ FULL TIME ☒
CURRENT SALARY: HOURLY ☒ $12.00	MONTHLY ☐	ANNUAL ☐
REASON FOR LEAVING: Laid off due to a budget cut		NUMBER SUPERVISED: 0

WORK LOCATION/ DIVISION: Norwalk Superior Court/ Community Legal Serv.	NAME OF SUPERVISOR: ATTORNEY CATHERINE GRANT	PHONE: 310 864-9935

I hereby certify that all statements made in connection with this application are true to the best of my knowledge and belief, and I understand and agree that any misstatement or omission of material fact on my part may cause forfeiture of all rights to employment by the Los Angeles Superior Court. My signature affirms that all information on this application is true to the best of my knowledge; further, I authorize all employers and institutions to release to the Los Angeles Superior Court confidential information concerning my employment.

SIGNATURE: Shams Q. Najm DATE: 08/09/2001

APPLICANTS WITH A DISABILITY, if you require special testing arrangements, please contact Human Resources at the time of application. The Court will make every reasonable effort to accommodate your needs.

Los Angeles Superior Court
Supplemental Questionnaire
Investigator Exam # C9754C

INSTRUCTIONS: This Supplemental Questionnaire is a required part of the application for this position. Please type or print legibly. Vague, illegible, or incomplete answers may disqualify you from further consideration for this classification. If you require additional space for information requested, please attach additional sheets. You must submit this questionnaire along with a completed Los

Angeles Superior Court application before the final filing date and time. Your response will be considered in determining who will qualify for the examination. You may submit a resume but you must answer all sections **(do not write "see attached resume")**.

Name: SHAMS Q. NAJM

1. Please list completed college courses that you believe are directly to this classification.

Name of Course	Location	Date	Hours of Instruction
PROBATE ADMINISTRATION	UWLA	9/92-5/94	12 Units
ACCOUNTING	UWLA	9/93-1/94	3 Units
PSYCHOLOGY	Virginia Union	9/67-1/68	3 Units

Consider your most significant experience when responding to the following questions.

2. Describe your field investigative experience and investigative report writing experience (including length and type).

EMPLOYER: LA COUNTY PROBATION DEPT/PTS – BAIL DEVIATION

POSITION TITLE: INVESTIGATOR AIDE

SCOPE OF DUTIES: Interview Defendants. A complete criminal history is compiled along with police agency comments. All of the information is furnished to the on duty commissioner who makes a decision on the matter of Bail.

MONTHLY CASELOAD: 80-100 CASES

LEVEL OF RESPONSIBILITY: MAINTAIN PRODUCTION LEVEL 2.0,

NUMBER OF REPORTS WRITTEN PER MONTH: 80-100

DESCRIPTION OF FIELD INVESTIGATION: Gather the facts as to why the defendant was arrested.

AVERAGE LENGTH: 1 paragraph to 2 paragraphs

ACHIEVEMENTS: Letter of Appreciation

3. Describe your experience working with clients that may have dementia (i.e. administration of psychotropic drugs, placement in secured facilities, interaction with medical professionals)

EMPLOYER: WISE SENIOR SERVICES

POSITION TITLE: OMBUDSMAN

SCOPE OF DUTIES: Advocate on behalf of elderly and dependent residents of skilled nursing facilities and secured facilities where residents are in locked facilities.

TIME DEVOTED TO ACTIVITY: 1-2 yrs 20 hrs/w

LEVEL OF RESPONSIBILITY: Whole facility

ACHIEVEMENTS: Letters/certificate of Appreciation. See Attachments.

4. Describe your knowledge and familiarity with medical terminology, including ability to understand medical diagnosis and the effects of various types of drugs.

EMPLOYER: WISE SENIOR SERVICES

POSITION TITLE: OMBUDSMAN LTC

SCOPE OF DUTIES: Advocate on behalf of elderly and dependent residents of skilled nursing facilities. Interact with the physician and psychologist of the resident regarding treatment/diagnosis/prescription.

LEVEL OF RESPONSIBILITY: Whole facility

ACHIEVEMENTS: Certificate of Appreciation
See Attachments

5. Describe your experience working with people of various backgrounds, such as ethnicity, disabilities, and sexual orientation.

EMPLOYER: Foundation of the Junior Blind

POSITION TITLE:	TIME DEVOTED TO ACTIVITY:
Recreational Leader	1-2 yrs 32 hrs mo

SCOPE OF DUTIES: Recreational and physical activities for blind children, I.E. physical exercise, Basketball, Track, walking, etc. Worked with children of various backgrounds, ethnicity and sexes (boys and girls). Their disability was their blindness.

LEVEL OF RESPONSIBILITY: 5-8 children

ACHIEVEMENTS: Appreciation from the children.

6. Are you able to communicate in any language other than English? ☐ Yes ☒ No
If yes, what language(s): _____
Level of proficiency: ☐ Read ☐ Write ☐ Speak and understand

7. Describe your work experience interviewing and assessing the needs of children.

EMPLOYER: Foundation of the Junior Blind

POSITION TITLE: Recreational Leader

TIME DEVOTED TO ACTIVITY: 1-2 yrs 32 hrs mo

SCOPE OF DUTIES: Lead the junior blind in recreational and physical activities. I.E. physical exercise, basketball, track, walking, etc.

LEVEL OF RESPONSIBILITY: 5-8 children

ACHIEVEMENTS: Appreciation from the children.

8. Describe your experience working with disabled adults.

EMPLOYER: WISE SENIOR SERVICES

POSITION TITLE: OMBUDSMAN LTC

SCOPE OF DUTIES: Advocate on behalf of the elderly and dependent residents in skilled-nursing care facilities. To make sure the residents are not financially and physically abused, that residents rights are protected.

TIME DEVOTED TO ACTIVITY: 10 yrs - 116 mos 20 hrs mo

LEVEL OF RESPONSIBILITY: Responsible at times from 1-3 facilities. Whole facility.

ACHIEVEMENTS: Certificate of Appreciation. See Attachments.

I, the undersigned, hereby certify that all statements made in this supplemental questionnaire accurately reflect my education, experience, and job-related skills. No attempt has been made to misrepresent my qualifications for the purpose of obtaining employment with the Los Angeles Superior Court. I understand and agree that any false statements and/or misrepresentations will result in

my disqualification or, if subsequently hired, my dismissal.

SHAMS Q. NAJM	/s/ Shams Q. Najm	08/09/2001
Print Your Name	Signature	Date

The Superior Court

JOHN A. CLARKE
EXECUTIVE OFFICER/CLERK

111 NORTH HILL STREET
LOS ANGELES
CALIFORNIA 90012

August 22, 2001

SHAMS NAJM
5586 VILLAGE GREEN
LOS. ANGELES, CA 90016-5207

Dear SHAMS NAJM:

Thank you for applying for the classification of INVESTIGATOR.

We regret to inform you that we cannot accept your application for INVESTIGATOR, Exam Number C9754C. Based on your application information, you do not meet the minimum experience requirements for this classification as stated in the bulletin, "*Graduation from an accredited college with a Bachelor's Degree in social work, psychology, gerontology, education, nursing or other closely related field. -AND- Three years' experience performing field investigations as a probation or parole officer, social worker, or other closely related occupation. -AND- One year field experience working with dependent and elderly adults and/or children. -AND- Demonstrated proficiency working with computers including Word and/or WordPerfect software to prepare clear and concise written reports.*"

We appreciate the time and effort you devoted to presenting your qualifications. If you have any questions regarding this notice, please telephone Jennifer Revuelta in the Recruitment and Selection Unit at (213) 893-9767 within ten (10) business days from the postmark on the envelope.

Again, thank you for exploring employment opportunities with the Los Angeles Superior Court. To learn of future employment opportunities, you may access our website at www.lasuperiorcourt.org or telephone our 24-hour job line at (213) 974-5444.

Sincerely,

Recruitment and Selection

EXP:02

L.A. COUNTY PROBATION OFFICERS UNION

[SEAL]

2500 WILSHIRE BOULEVARD, SUITE 1010
LOS ANGELES, CA 90057
(213) 386-5860 FAX (213) 386-5878

November 19, 2001

To Whom It May Concern:

Re: Shams Najm, Investigator

Please be advised that the above-mentioned individual is a member in good standing of Local 685. He is currently employed by the Los Angeles County Probation Department, Bureau of Adult Field Services, Division of Pretrial Services, which is a specialized unit. His duties as an Investigator Aide are field work-related and are, but not limited to the following. (Investigator Aide job bulletin duties listed).

If you have any questions or concerns or any further information is needed please feel free to contact me Anita Olivares, Investigator/Union Representative Pretrial Services Vice President of Local 685.

Sincerely,

Anita Olivares

ANITA OLIVARES

AO/td

opeiu #537, afl-cio

[SEAL] Los Angeles County
Department of Human Resources

Class Specification: INVESTIGATOR AID, PROBATION

ITEM NUMBER: 8670

APPROVAL DATE: 03/17/1998

DEFINITION:

Performs the more routine and less complex investigative activities in the Bail Deviation/Own Recognizance and Supervised Release Programs.

CLASSIFICATION STANDARDS:

Positions allocable to this class report to a Senior Investigator Aid, Probation, and under close supervision, perform the more routine and less complex investigative activities after receiving training on the concept of pretrial release services which include own recognizance and bail deviation programs, interviewing and investigating techniques and divisional policies and procedures.

EXAMPLES OF DUTIES:

Learns the structure and functions of criminal justice agencies including police, Judiciary, District Attorney, Public Defender, Probation and Grand Jury.

Learns court structure, misdemeanor and felony arraignment procedures, and criminal trial procedures.

Learns the purpose, procedures and methods for conducting interviews and investigations.

Interviews arrestees by telephone and in person to verify information on the application for own recognizance release and bail deviation.

Contacts law enforcement agencies to learn existence of, and to review criminal record histories.

Reviews custody records and uses telephone to search for individuals released on their own recognizance who have failed to appear at a hearing as ordered. Compiles information from Automated Justice Information System (AJIS), Prosecutors Management Information System (PROMIS), and Automated Index (AI) regarding a defendant's current status including cases pending, and court appearances.

Confers regularly with supervisors in individual and group conferences to obtain instruction, advice and counsel.

May perform other routine investigative tasks as assigned.

MINIMUM REQUIREMENTS:

TRAINING AND EXPERIENCE:

Completion of 60 semester units or 90-quarter units from an accredited college. Nine semester or 13.5 quarter units must be in one or a combination of the following specialties: criminal justice,

* * *

The Superior Court of California, County of Los Angeles

John A. Clarke
Executive Officer/Clerk

111 North Hill Street
Los Angeles
California 90012

March 21, 2002

Congresswoman Diane Watson
5100 Goldleaf Circle, Suite 208
Los Angeles, CA 90056

Dear Congresswoman Watson:

Your February 28, 2002, letter to John A. Clarke was referred to me for response. You wrote on behalf of Shams Najm, a constituent in your congressional district, whose application for Investigator with the Superior Court was deemed "non-qualifying". I am pleased to have his application re-evaluated as you have requested.

In reviewing the supporting documents that accompanied your letter, there was a letter from Anita Olivares, Investigator/Union Representative Pre-Trial Services, Vice President of Local 685. She wrote that Mr. Najm's Investigator Aid duties are fieldwork related and not limited to the duties listed in the Los Angeles County Classification Specification of Investigator Aid, Probation.

To properly evaluate and credit Mr. Najm for his field investigator work, it is necessary for him to detail his qualifying experience. The description of his fieldwork and the length of time must be written with enough specificity to allow for a thorough re-evaluation. Consistent with our past practices in processing similar requests, I ask that the Investigator Aid duties he performs and believes to be at the level of a Probation or Parole Officer, Social Worker or other closely related occupation be verified by his

manager, Mr. Frank McCormick, Director, Pre-Trial Services, before being submitted to me. My address is: 111 N. Hill Street, Room 203, Los Angeles, CA 90012.

I look forward to receiving his supporting justification and having it evaluated as soon as possible. Should you or Mr. Najm have any questions, please telephone Mr. Don Heuman, Administrative Services Manager, at 213.974.5136.

Yours truly,

/s/ Cynthia D. Banks
Cynthia D. Banks
Director of Human Resources

CDB/DH/cls

c: Lonnie Sanders, Administrative Assistant

[SEAL]

Congress of the United States
House of Representatives
Washington, D.C. 20515

[Name And Address Omitted In Printing]

April 30, 2002

John A. Clarke, Executive Officer/Clerk
The Superior Court
111 North Hill Street
Los Angeles, CA 90012

Attn: Cynthia D. Banks, Dir. Human Resources

Re: Mr. Shams Najm

Dear Ms. Banks:

This is a response to your letter of March 21, 2002, regarding the above constituent, who resides in the 32nd Congressional District.

Upon further conversations with Mr. Najm, he indicated that a re-evaluation should not be necessary because he is fully qualified to take the exam.

Mr. Najm claims that Ms. Revuelta told him that he met all the requirements for the position except one year field experience working with dependent and elderly adults and/or children. Ms. Revuelta also told him that his job-related experience was acceptable.

It appears that the letter from Anita Olivares cleared up the question of field experience as required in the Employment Opportunity Bulletin Exam No. C97546, and Mr. Najm should be allowed to take the exam.

Further consideration of Mr. Najm's request would be appreciated.

Sincerely,

/s/ Diane E. Watson
Diane E. Watson
Member of Congress

DEW:ls

JOHN A. CLARKE
EXECUTIVE OFFICER/
CLERK

[SEAL]

Superior Court of
California

111 NORTH HILL STREET
LOS ANGELES, CA
90012-3014

County of
Los Angeles

June 4, 2002

Congresswoman Diane E. Watson
5100 Goldleaf Circle, Suite 208
Los Angeles, California 90056

Dear Congresswoman Watson:

This is in response to your letter dated April 30, 2002, on behalf of Mr. Shams Najm requesting further consideration in fulfilling the selection requirements for the Investigator position with the Superior Court.

In order to substantiate the assertion that Mr. Najm possesses the qualifying experience as indicated in the letter submitted by Anita Olivares, Investigator/Union Representative Pretrial Services, Vice President of Local 685, we contacted his manager, Mr. Frank McCormick, Director, Pre-Trial Services. Ms. Olivares wrote that Mr. Najm's Investigator Aid duties are fieldwork related and not limited to the duties listed in the Los Angeles County Classification Specification of Investigator Aid, Probation. On May 16, 2002, Mr. McCormick was asked to verify the accuracy of Ms. Olivares' statement; he did not concur with the statement. Furthermore, Mr. McCormick stated that Mr. Najm does not go into the field to perform investigations, but rather performs standard Investigator Aid duties.

Based on the aforementioned, it is with regret that Mr. Najm is not eligible to continue in the examination process.

If Mr. Najm wishes to submit a detailed description of the Investigator Aid duties he performs and believes to be at the level of a Probation Officer, Social Worker, or other closely related occupation, we request that he receive acknowledgment verifying his experience, commensurate with the job requirements by his manager, Mr. Frank McCormick.

If Mr. Najm is interested in exploring other employment opportunities, he may wish to visit our Human Resources office, call our 24-hour job hotline at (213) 974-5444, or access our website at www.lasuperiorcourt.org.

Yours truly,

/s/ Cynthia D. Banks
Cynthia D. Banks
Director of Human Resources

CDB/jr

c: John A. Clarke, Executive Officer/Clerk
Lonnie Sanderson, Administrative Assistant
Shams Njam

HENRICHS LAW FIRM, P.C.
835 Wilshire Boulevard,
Suite 300
Los Angeles, California
90017

GINA R. LEWIS
DIRECT: (213) 239-0514

Telephone: (213) 239-0500
Facsimile: (213) 239-0329

glewis@henrichslaw.com

December 5, 2003

Shams Q. Najm
5586 Village Green
Los Angeles, CA 90016

Re: Najm v. County of Los Angeles, et al.
Los Angeles County Superior Court Case No. BC294436

Dear Mr. Najm:

I write in follow up to our December 1, 2003 telephone conversation regarding the defendant Superior Court's letter, settlement offer of $5,000.00 and deposition notice for December 17, 2003. During our conversation, you stated that you were not willing to settle this matter at this time, and we discussed alternative dates for your deposition.

During our telephone conversation, I advised that the defendant Superior Court will seek to take your deposition in December, 2003 or early January, 2004. Thereafter, defendant Superior Court will likely move for summary judgment on the grounds that you cannot prove your claims against it. I explained that a motion for summary judgment is a written pleading that tests the sufficiency of your claims against the Superior Court. In their motion for summary judgment, the defendant Superior Court may

argue that you cannot make out a *prima facie* case for age and race discrimination.

To establish a *prima facie* case of age and race discrimination, you will have to show that you were over the age of 40 and an African American/Black who was qualified for the Investigator position with the Los Angeles County Superior Court at the time you applied for the position. Also, you will have to show that after you were denied the position, it remained open and another individual under the age of 40 and non-African American was given the position. (*McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802).

It is our position that you can establish that you were over the age of 40 and an African American/Black at the time for the Investigator position. You must also establish that you were qualified for the Investigator position and that the position remained open after you were rejected and was given to another individual who was under the age of forty and not an African American/Black.

If you establish that you were over forty, an African American/Black, was qualified for the position, rejected and the job remained open, then the Superior Court must articulate a legitimate, non-discriminatory reason for its employment decision to reject your application. (*McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802). Defendant Superior Court will likely argue that you were not qualified for the position. Defendant Superior Court may state that it advised you that you are not qualified, however, gave you the opportunity to submit additional documentation and verification reporting your qualifications. The defendant Superior Court may argue that they

contacted your immediate supervisor who confirmed you were not qualified.

We anticipate that the defendant Superior Court will argue that at the time it reviewed your employment application, it was unaware that you were over the age of 40 and that you were African American. If the judge believes that defendant Superior Court has articulated a legitimate non-discriminatory reason for its actions, namely, that you were not qualified and had no idea of your age and race, then the presumption of intentional discrimination disappears, and you must demonstrate that the defendant Superior Court's explanation is pretextual.

You have stated in the past and also during our December 1, 2003 telephone conversation that the Superior Court has been untruthful in its reasons for denying your application. You have also stated that you want the judge to be aware that the Superior Court has lied. While it may be true the Superior Court misrepresented the facts and the truth when it denied your employment application, as stated during our discussion, we must prove by a preponderance of the evidence that the Superior Court's reasons for rejecting your employment application were based on your age and race. It is not enough to prove that the Superior Court was untruthful. If the Superior Court's reasons for not hiring you were not based on your age or race, then we will be unable to prove discrimination.

Note that the Superior Court claims that Jennifer Revuelta, the analyst who reviewed your application, was not aware of your age or your race at the time she reviewed your application and ultimately rejected it. The Superior Court claims that the Equal Opportunity Questionnaire, which identified your age and race and that you

submitted with your application, was separated prior to Ms. Revuelta's review. While your application and resume reflect dates of when you attended school and held certain employment, it does not definitively reflect your race. Therefore, if the Equal Opportunity Questionnaire was removed from your application prior to review, it will be difficult to establish that the Superior Court was aware of your race and age, and based its decision to reject your application on your race and age

Based on the foregoing, the final factor, establishing that the Superior Court's explanation was pretextual, will be difficult to prove. After the judge reviews the documentation supporting your position and the defendant Superior Court's position, he will make a ruling. If the court determines that the defendant articulated a legitimate nondiscriminatory reason for its rejection for your application, then the Superior Court's motion for summary judgment will be granted and the case is over. It ends at that stage of summary judgment and there is no trial. Also, there is no further opportunity to discuss settlement.

However, if the Court believes that the Superior Court's reasons for rejecting your application were pretextual, then the motion for summary judgment is denied and the matter moves on to trial. Following a denial of a summary judgment motion, the parties typically engage in settlement negotiations to resolve the matter. Note that this is not always the case.

At this point, we continue to seek evidence and facts through discovery. If we are able to obtain evidence confirming that your rejected employment application was based on your age and/or race, we may have a stronger chance to prevail at the summary judgment motion stage.

However, prevailing at summary judgment does not guarantee prevailing at trial should the matter even go to trial.

By letter dated December 2, 2003, I advised defendant's counsel that you are available for deposition on **Friday, December 19, 2003, Monday, December 22, 2003 or Friday, January 9, 2004**. To date, I have not received a response from defendant's counsel. Upon receipt and confirmation of a deposition date, I will advise. Thereafter, we will discuss your deposition preparation.

Finally, in light of the foregoing, you should reconsider the Superior Court's settlement offer, and consider a reasonable counter-offer.

Thank you for your time and attention to the foregoing. Should you have any questions or concerns, please contact me.

Very truly yours,

/s/ Gina R. Lewis
Gina R. Lewis

GRL:dj

Alton Welch
Senior Investigator
Pre-Trial Services
Bail Deviation
Wilshire Office

December 18,2003
Thursday

Regarding: Reference Letter

Alton Welch;

I am writing this letter requesting that my mileage forms and out office itinerary detailing my County of Los Angeles Probation Department Bail Deviation training and Field interviewing skills dating from my hire date of August 1998 through the present (05Yrs 04M) be verified by you and so stated in a reference letter. This letter is for a Probate Investigator position that I applied for with The State of California Superior Court County of Los Angeles. Please include in the letter that Pre-Trial Services was a part of the Superior Court.

Thank You Much,

/s/ Shams Q. Najm
Shams Q. Najm
Investigator Aide
E#291146
(323)299-1154 (Home)

P.S. I went through the Reserve DPO training Program; passed the DPO I Field Examination in 1997/98 and was hired shortly thereafter.

cc: Sr. Investigator Diana Cunningham; Connie Leathers and Shiela Lindsey.

CATHERINE GRANT WIEDER
Attorney at Law
13017 Artesia Blvd., Suite D-120
Cerritos, CA 90703-1365
(562) 404-4039
Fax: (562) 404-4109
Email: cwieder@wieder-law.com

January 12, 2004

re: SHAMS Q. NAJM

To Whom it May Concern:

This will confirm that SHAMS Q. NAJM was employed under my supervision at Community Legal Services/Legal Aid Society of Orange County from August 1993 through October 1995 as a paralegal.

Shams is a good paralegal. He is very thorough in his preparation and careful to think through all options. He is dogged in pursuing the client's best interests.

In his work for Community Legal Services, Shams was required to do extensive interviewing of clients. He drafted letters, forms and memos for review by the supervising attorneys. He conveyed legal advice to clients as directed by the supervising attorneys.

Shams worked well with clients, co-workers and opposing parties. He was supportive to other staff and could be relied on to "pitch in" when needed. He took the initiative to propose solutions to problems.

Shams left Community Legal Services because significant reductions in federal funding for the program were anticipated. I understand that he was re-hired as a temporary hotline paralegal for four months the following year,

however by that time I had also left Community Legal Services.

I hold Shams in very high regard, both personally and professionally, and recommend him for any position for which he may be qualified.

Very truly yours,

/s/ Catherine Grant Wieder
Catherine Grant Wieder

CG:hs

[SEAL] Richard Shumsky Chief Probation Officer

County of Los Angeles Probation Department 9150 East Imperial Highway, Downey, California 90242

[SEAL]

January 21, 2004

To: Mr. Shams Najm, Investigator Aide
Pretrial Services Division

From: Mr. Alton Welch, Senior Investigator /s/ Ann
Pretrial Services Division

Subject: **Reference Letter**

This memo is in response to your request that I provide verification of your mileage claims and out of office itineraries in the form of a reference letter to the Superior Court. You also requested that I verify your interviewing skills for the past (5) five years.

Mr. Najm, I must inform you that we have checked with Probation Headquarters and spoken with the department's Personnel Officer seeking clarification regarding your request. The Personnel Officer has informed us that Probation Supervisors and Managers do not provide reference letters per departmental policy.

Any employment related verification should be directed to the Probation Department's Personnel Services Office in writing by the requesting agency.

CC: Frank McCormick, Probation Director
Yvette Ware, Personnel Officer

ADMINISTRATIVES SERVICES BUREAU
PERSONNEL SERVICES OFFICE

January 21, 2004

To: Shams Najm

From: Katherine L. Brooks /s/ KLB

SUBJECT: **PROBATION OFFICER WRITTEN TEST**

As requested, following is verification of taking and passing the written test for Probation Officer (Field) examination:

- Test Date: October 25, 1997
- Test Title: Probation Officer
- Test Results Passed test

Thank you,
Katherine L. Brooks

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
DEPARTMENT C25

SHAMS Q. NAJM, PLAINTIFF, VS. COUNTY OF LOS ANGELES; LOS ANGELES COUNTY SUPERIOR COURT; AND DOES 1 THROUGH 100, INCLUSIVE, DEFENDANTS.	CASE NO. BC294436

HONORABLE DAVID R. CHAFFEE,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT

APRIL 20, 2004

APPEARANCES OF COUNSEL:

FOR PLAINTIFF:	HENRICHS LAW FIRM P.C. BY: JOHN HENRICHS
FOR DEFENDANT:	PAUL PLEVIN SULLIVAN & CONNAUGHTON LLP BY: FRED M. PLEVIN

[2] SANTA ANA, CALIFORNIA –
TUESDAY, APRIL 20, 2004
AFTERNOON SESSION

–oOo-

(THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT:)

THE COURT: NAJM VERSUS COUNTY OF LOS ANGELES.

MR. HENRICHS: GOOD AFTERNOON, YOUR HONOR. JOHN HENRICHS ON BEHALF OF PLAINTIFF.

MR. PLEVIN: GOOD AFTERNOON, YOUR HONOR. FRED PLEVIN ON BEHALF OF THE MOVING PARTY, DEFENDANT.

THE COURT: GENTLEMEN, GOOD AFTERNOON. WE HAVE TWO MOTIONS ON FOR THIS AFTERNOON. AND I THINK I'VE ALREADY ADVISED YOU THROUGH THE CLERK WHEN THE APPLICATION FOR ORDER SHORTENING TIME FOR THE SECOND MOTION WAS GRANTED, THAT THE ORDER WOULD BE THAT THE MOTION FOR SUMMARY JUDGMENT WOULD BE HEARD, ARGUED, AND RULED UPON PRIOR TO THE MOTION TO WITHDRAW AS COUNSEL.

AND SO I THINK FOR YOU, MR. HENRICHS, YOU WERE ON NOTICE THAT YOU NEEDED TO BE PREPARED TO ARGUE THIS MOTION THIS AFTERNOON IRRESPECTIVE OF THE STATUS OF YOUR RELATIONSHIP WITH YOUR CLIENT; CORRECT?

MR. HENRICHS: YES.

THE COURT: SO WE START BASICALLY ON MR. PLEVIN'S SIDE. ON YOUR MOTION FOR SUMMARY JUDGMENT, DO YOU HAVE ANYTHING THAT YOU WISH TO ADD TO YOUR PAPERS?

MR. PLEVIN: YES, YOUR HONOR, JUST VERY BRIEFLY.

[3] THE COURT: SURE.

MR. PLEVIN: I THINK THE PAPERS DO SET OUT ALL THE ISSUES, I THINK, ADEQUATELY FOR THE COURT. BUT I AM A FAN, AFTER WE HAVE GONE INTO THE NITTY-GRITTY DETAILS AND LOOKED AT THE WORDS AND THE LETTERS AND LOOKED AT THE DOCUMENTS, OF LOOKING AT THE BIG PICTURE. AND I NEVER WANT TO LOSE SIGHT OF THAT, YOUR HONOR.

THE BIG PICTURE HERE IS THIS IS A CLAIM OF INTENTIONAL DISCRIMINATION. AND THERE IS – EVEN BEING MOST CHARITABLE TO THE PLAINTIFF IN THEIR PAPERS AND EVEN CONSIDERING THE CONCLUSIONARY ALLEGATIONS AND THE EVIDENCE WE OBJECTED TO, THERE IS NOT A SHRED OF EVIDENCE THAT WOULD SUPPORT AN INFERENCE OF INTENTIONAL DISCRIMINATION. UNDER THE GUZ CASE, THAT IS VERY CLEAR THAT THAT IS MINIMALLY REQUIRED IN ORDER TO AVOID SUMMARY JUDGMENT.

AT MOST, PLAINTIFF HAS DONE, I THINK, AN ADMIRABLE JOB WITH VERY LITTLE FROM A FACTUAL STANDPOINT, IN MY VIEW. BUT AT MOST, THEY HAVE TRIED TO ATTACK THE CREDIBILITY OF THE REASONS THAT THE SUPERIOR COURT GAVE TO MR. NAJM. WE THINK UNSUCCESSFULLY SO.

BUT AS THE GUZ CASE MADE VERY CLEAR, THE STATUTES AT ISSUE DO NOT PROHIBIT LYING IF THAT IS WHAT IS SHOWN. THEY PROHIBIT DISCRIMINATION.

AND AT THE END OF THE DAY WHEN THE DUST SETTLES ON ALL THE ATTEMPTS THE PLAINTIFF HAS MADE, I JUST KEEP COMING BACK TO THE

FACT THAT THERE IS NOT A SHRED OF EVIDENCE ON [4] WHICH A REASONABLE JUROR COULD DRAW AN INFERENCE OF INTENTIONAL DISCRIMINATION. AND ON THAT BASIS, I ASK THE COURT TO GRANT OUR MOTION.

THE COURT: THANK YOU.

MR. HENRICHS, I SUSPECT I HAVE BEEN – AT LEAST BASED ON MR. PLEVIN'S PRONUNCIATION, I HAVE BEEN MISPRONOUNCING YOUR CLIENT'S NAME. HOW IS IT PRONOUNCED?

MR. HENRICHS: SHAMS NAJM.

THE COURT: MR. NAJM. NOT NAJM OR NAJM.

MR. HENRICHS: NO.

THE COURT: I APOLOGIZE TO HIM FOR MISPRONOUNCING.

MR. HENRICHS: THANK YOU, YOUR HONOR. ALL ARGUMENTS DEFENSE COUNSEL MADE ARE ADDRESSED IN OUR REPLY. THE ONE THING I WOULD LIKE TO ADDRESS – I MEAN WAS IN OUR OPPOSITION. IN THEIR REPLY, THEY OBJECTED TO OUR INCLUSION OF MS. BANKS – TWO LETTERS FROM MS. BANKS THAT WERE WRITTEN – SHE WAS THE DIRECTOR OF HUMAN RESOURCES. THOSE ARE WRITTEN TO THE EEOC AND WE OBTAINED THEM AND THOSE ARE BASICALLY ADMISSIONS AGAINST INTEREST TO OVERCOME THE HEARSAY RULE.

THEY ARE ALSO BUSINESS RECORDS. AND THEY ARE OTHERWISE FOUNDATIONALLY SUPPORTED BECAUSE THEY ARE RELIABLE IN THE SENSE THAT THEY COULD HAVE – IF SHE DIDN'T WRITE THEM OR DIDN'T STAND BY THEM OR WANTED TO EXPLAIN THEM, SHE COULD HAVE SUBMITTED A SUPPLEMENTAL DECLARATION TO THAT FACT.

[5] THE COURT: ANYTHING ELSE?

MR. HENRICHS: NO.

MR. PLEVIN: JUST TO RESPOND TO THAT VERY BRIEFLY, NUMBER ONE, EVEN IF YOU CONSIDERED THE LETTERS, IT DOESN'T MATTER BECAUSE AT MOST, THE LETTERS SHOW THAT MS. REVUELTA SHREDDED THE EOE QUESTIONNAIRE BEFORE SHE LOOKED AT THE APPLICATION.

AND EVEN IF SHE LOOKED AT THE APPLICATION OR THE EOE QUESTIONNAIRE, ALL THAT DOES IS PUT THIS CASE ON THE SAME FOOTING AS EVERY OTHER DISCRIMINATION CASE IN WHICH SUMMARY JUDGMENT WAS GRANTED BECAUSE IN 99.9 PERCENT OF THE CASES, THE EMPLOYER IS WELL AWARE OF THE PROTECTED STATUS. AND ALL THE CASES THAT WE LISTED IN OUR FOOTNOTE, THE EMPLOYER WELL KNEW OF THE PROTECTED STATUS.

AND ON THE EVIDENTIARY GROUNDS, COUNSEL'S DECLARATION THAT HE RECEIVED THE DOCUMENTS FROM THE EEOC IS SIMPLY INSUFFICIENT FOUNDATION FOR ADMISSION OF THOSE DOCUMENTS.

THE COURT: ALL RIGHT. I THINK I HAVE A LOT OF GROUND TO COVER. AND SO WE'LL START WITH THIS:

DEFENDANT HERE ATTEMPTS ADJUDICATION WITH VARIOUS, QUOTE, "ISSUES," END QUOTE, INVOLVING THIS CAUSE OF ACTION. BUT I DON'T UNDERSTAND THAT TO BE PERMITTED EITHER BY CCP SECTION 437C(F)1 OR RULE 342 OF THE CALIFORNIA RULES OF COURT.

SO FOR OUR PURPOSES, I WANT YOU TO UNDERSTAND THAT [6] I HAVE DETERMINED THAT THIS MOTION IS GOING TO BE TREATED ONLY AS ONE FOR SUMMARY JUDGMENT AND NOT FOR SUMMARY ADJUDICATION.

AS TO THE MERITS OF THAT PARTICULAR MOTION, IT SEEMS TO ME, FIRST, THAT THE MOVING PARTY MUST CARRY THE BURDEN OF SHOWING THE EMPLOYEE'S ACTION HAS NO MERIT. FOR THAT, OF COURSE, SEE CCP SECTION 437C(P)(2). AND IT MAY DO THAT BY ADDUCING EVIDENCE EITHER, ONE, NEGATING AN ESSENTIAL ELEMENT OF THE EMPLOYEE'S CLAIM OR, TWO, BY SHOWING SOME LEGITIMATE NONDISCRIMINATORY REASON FOR THE ACTION TAKEN AGAINST THE EMPLOYEE.

AND HERE, I THINK IN A VERY REAL SENSE, THE MOVING PARTY IS ESTABLISHING BOTH. AND WE KNOW AT LEAST UNDER THE CRITERIA SET FORTH IN MC DONNELL DOUGLAS VERSUS GREEN AT 411 U.S. 792, THAT THERE ARE CERTAIN FACTORS THAT MUST BE CONSIDERED.

NUMBER ONE, THAT THE PLAINTIFF BELONGS TO A PROTECTIVE CLASS. WELL, WE KNOW THAT. THE ALLEGATION IS HE IS AFRICAN AMERICAN AND HE IS AGE 58.

TWO, HE APPLIED AND WAS QUALIFIED FOR THE JOB FOR WHICH THE EMPLOYER WAS SEEKING APPLICANTS. AND HERE, I NOTE THE PLAINTIFF DOESN'T DISPUTE FACT NUMBER 6 THAT THE DEFENDANT WOULD RE-EVALUATE HIS EXPERIENCE, QUALIFICATIONS FOR THE INVESTIGATIVE POSITION, AND THAT THE DEFENDANT REQUESTED THAT PLAINTIFF PROVIDE INFORMATION DETAILING HIS QUALIFYING EXPERIENCE FOR THE POSITION IN ORDER TO [7] REEVALUATE HIS APPLICATION.

PLAINTIFF DOES DISPUTE FACT NUMBER 7, THAT HE DID NOT PROVIDE ANY INFORMATION. BUT THE ONLY EVIDENCE THAT PLAINTIFF REFERENCES IS EXHIBITS 15 AND 16 OF THE DEFENDANT'S EXHIBITS WHICH ARE CONGRESSWOMAN WATSON'S LETTERS.

THE PROBLEM I HAVE IS THAT THERE IS REALLY NOTHING IN THOSE TWO EXHIBITS THAT PROVIDE INFORMATION DETAILING PLAINTIFF'S QUALIFYING EXPERIENCE FOR THE POSITION.

IN THE FIRST INSTANCE, OF COURSE, THEY CAME FROM CONGRESSWOMAN WATSON ON BEHALF OF PLAINTIFF AND NOT FROM PLAINTIFF HIMSELF. FURTHERMORE, THIS WAS DONE FIVE MONTHS AFTER THE REQUEST WAS MADE BY THE DEFENDANT.

SECONDLY, SIMPLY BECAUSE CONGRESSWOMAN WATSON AND PLAINTIFF FEEL HIS EXPERIENCE CAN BE MANIPULATED TO FIT THE THREE-YEAR REQUIREMENT DOESN'T MEAN THAT THE EMPLOYER DOES.

FINALLY, THERE IS NOTHING IN THOSE LETTERS THAT CLEARLY SHOWS THAT PLAINTIFF IS QUALIFIED FOR THE POSITION.

THEREFORE, AS A MATTER OF LAW, PLAINTIFF FAILED TO COMPLETE THE APPLICATION PROCESS AND, THEREFORE, CANNOT ESTABLISH A PRIMA FACIE CASE FOR AGE OR RACIAL DISCRIMINATION.

SECONDLY, DEFENDANT CONTENDS PLAINTIFF WAS NOT QUALIFIED FOR THE POSITION. HERE, ALTHOUGH NONE OF THE DEFENDANT'S FACTS UNEQUIVOCALLY STATE THAT PLAINTIFF WAS NOT QUALIFIED, THE PLAINTIFF HIMSELF FAILS TO OPPOSE THE FACTS [8] WHICH SUGGEST HE WAS NOT QUALIFIED.

AND I WOULD REFER YOU IN PARTICULAR TO FACT NUMBER 33 IN TERMS OF CRITERIA GOING TO NUMBER THREE, THAT DESPITE BEING QUALIFIED, THE PLAINTIFF WAS REJECTED. WELL, I REFERENCE MY IMMEDIATELY PAST DISCUSSION AS TO THE ISSUE OF REJECTION BECAUSE I THINK THAT DISCUSSION IS APPLICABLE HERE.

IT IS NOT CLEAR THAT IN FACT REJECTION WAS MADE SO MUCH AS "WE WANT MORE INFORMATION FROM YOU, MR. NAJM," WHICH WAS NOT ACTUALLY SUPPLIED BY HIM.

NUMBER FOUR ON THE CRITERIA LIST, THAT AFTER THE PLAINTIFF'S REJECTION, THE POSITION REMAINED OPEN AND THE EMPLOYER CONTINUED TO SEEK APPLICATIONS FROM PERSONS OF COMPARABLE QUALIFICATIONS.

I NOTE THAT THE PLAINTIFF SHOWS THE POSITION DID NOT REMAIN OPEN, BUT THAT THEY HIRED SOMEONE WHO WAS EFFECTIVELY MORE QUALIFIED THAN PLAINTIFF.

I ALSO NOTE THE DEFENDANTS ARGUE THERE WAS NO DISCRIMINATORY ANIMUS, WHICH I THINK IS REALLY WHAT THIS CASE IS ABOUT.

TO THESE FACTS, PLAINTIFF PROVIDES THE SAME, QUOTE, "EVIDENCE," END QUOTE, AS SET FORTH IN FACT NUMBER 7. IN ADDITION, FACT NUMBER 23 STATES, QUOTE, "PLAINTIFF'S EOE QUESTIONNAIRE AND ALL INFORMATION CONTAINED THEREIN WAS NEVER SEEN, USED, OR CONSIDERED IN THE SUPERIOR COURT'S EVALUATION OF PLAINTIFF'S APPLICATION MATERIAL FOR THE [9] INVESTIGATIVE POSITION," END QUOTE.

PLAINTIFF'S RESPONSE: DISPUTED.

IT GOES ON TO SAY IN A LETTER DATED AUGUST 21, 2002, AND JULY 17, 2002, FROM CYNTHIA D. BANKS WHO WAS THE DIRECTOR OF HUMAN RESOURCES FOR THE SUPERIOR COURT OF LOS ANGELES, THESE LETTERS TO THE EEOC, SHE STATED THAT MS. – I'M GOING TO MISPRONOUNCE – REVUELTA, R-E-V-U-E-L-T-A, THE PERSON WHO REVIEWED THE APPLICATIONS, WAS GIVEN PLAINTIFF'S EOE

QUESTIONNAIRE AND WAS THE ONE WHO REMOVED IT. SO SHE HAD SEEN IT.

I THINK AT THIS POINT WHAT I HAVE TO SAY IS I THINK THIS IS AN ASSUMPTION BECAUSE THERE REALLY IS NO EVIDENCE THAT REVUELTA ACTUALLY READ IT. TO THE CONTRARY, IN FACT SHE DECLARED SHE DID NOT READ IT.

SO FOR THESE REASONS, I AM SATISFIED THAT THE PLAINTIFF HAS NOT MADE A PRIMA FACIE CASE. THE BURDEN DOESN'T SHIFT TO THE DEFENDANTS IN THIS MATTER.

SO TO THE FINAL RULING, THE MOTION FOR SUMMARY JUDGMENT IS GRANTED. COURT FINDS THAT PLAINTIFF FAILS TO COMPLY WITH RULE 342 OF THE CALIFORNIA RULES OF COURT AND THAT HE DOES NOT STATE ALL THE PLAINTIFF'S EVIDENCE ON THE LEFT-HAND COLUMN, NOR DOES HE ACCURATELY CITE OR REFERENCE HIS OWN EVIDENCE.

THE PLAINTIFF CANNOT MAKE THE PRIMA FACIE CASE FOR DISCRIMINATION HEREIN. THE PLAINTIFF HAS PROVIDED NO EVIDENCE THAT HE ACTUALLY COMPLETED THE APPLICATION PROCESS [10] AND, THEREFORE, AS A MATTER OF LAW, PLAINTIFF HAS NOT, QUOTE, "APPLIED," END QUOTE, FOR THE JOB.

FURTHERMORE, THE PERSON ACTUALLY HIRED WAS IN FACT MORE QUALIFIED THAN PLAINTIFF. PLAINTIFF HAS ALSO FAILED TO SHOW ANY DISCRIMINATORY ANIMUS OR DISCRIMINATORY INFERENCE. RATHER, THE EVIDENCE PROVIDED

ESTABLISHES THAT PLAINTIFF WAS NOT QUALIFIED FOR THE JOB AND WHEN ASKED TO PROVIDE FURTHER DETAILED INFORMATION ABOUT HIS QUALIFICATIONS, HE FAILED TO DO SO.

WITH RESPECT TO THE DEFENDANT'S OBJECTIONS TO THE EVIDENCE, NUMBER 1, SUSTAINED; NUMBER 2, OVERRULED; NUMBER 3, OVERRULED; NUMBER 4 IS SUSTAINED; NUMBER 5 IS SUSTAINED; NUMBER 6, OVERRULED; NUMBER 7, SUSTAINED; NUMBER 8, SUSTAINED; NUMBER 9, SUSTAINED.

MR. PLEVIN, IF YOU WOULD KINDLY PREPARE THE ORDER AND JUDGMENT AND GIVE NOTICE –

MR. HENRICHS: YOUR HONOR, ONE THING. DID YOU GET MY SUPPLEMENTAL OPPOSITION THAT HAD THE SURE CASE IN IT?

THE COURT: I AM NOT QUITE SURE I DID. PARDON MY PUN.

MR. HENRICHS: THAT STANDS FOR THE PROPOSITION THAT IF A PLAINTIFF IS MISLED ABOUT THE PROCESS TO COMPLETE THE VALUATION AND ON A SUMMARY JUDGMENT MOTION YOU HAVE TO DEEM IT TRUE THAT MR. NAJM WAS TOLD AT THE VERY FIRST PHONE CALL THERE IS NO APPEAL PROCESS AND WE FOUND OUT THAT IS MISLEADING, THAT CANNOT IN – AMOUNT TO A DEFENSE OF FAILURE TO COMPLETE THE PROCESS.

[11] THE COURT: ALL RIGHT. THANK YOU, COUNSEL. I HAVE RULED.

WITH RESPECT TO THE MOTION TO BE RELIEVED AS COUNSEL, THAT MOTION IS GRANTED.

MR. HENRICHS: THANK YOU, YOUR HONOR.

THE COURT: ACTUALLY, I HAVE TO BACK OFF ON THAT. HOLD ON A SECOND. I DON'T HAVE PROOF OF SERVICE OF THE MOTION. DO YOU HAVE THAT WITH YOU, COUNSEL?

MR. HENRICHS: YES, I BELIEVE I DO.

THE COURT: IS IT SOMETHING WE CAN MAKE A COPY OF?

MR. HENRICHS: I THINK WHAT HAPPENED IS THE ATTORNEY SERVICE TOOK IT TO DOWNTOWN L.A.

MR. PLEVIN: I WILL NEED A COPY TOO SO I AM SURE I HAVE MR. NAJM'S CURRENT ADDRESS.

MR. HENRICHS: THIS IS THE NOTICE OF RULING. I DON'T KNOW IF THAT IS WHAT YOU'RE LOOKING FOR. BUT I CAN PROVIDE THE PROOF OF SERVICE. I DON'T HAVE IT WITH ME. THAT'S THE ONE I BROUGHT, THE NOTICE OF EX PARTE MOTION. THE OTHER ONE SHOULD HAVE BEEN ATTACHED TO THE ORIGINAL MOTION, THE PROOF OF SERVICE.

THE COURT: WELL, WHAT I NEED IS ACTUALLY PROOF OF SERVICE TO THE ACTUAL MOTION.

MR. HENRICHS: IT SHOULD HAVE BEEN ON THERE BECAUSE THE PAPERS ACTUALLY WENT OUT BEFORE IT WAS FILED.

THE COURT: THE PROOF OF SERVICE ATTACHED TO THIS DOCUMENT – INCIDENTALLY, JUST TO COMPLETE THE RECORD, THIS [12] DOCUMENT IS A NOTICE OF RULING ON EX PARTE MOTION TO SHORTEN TIME TO BE RELIEVED AS COUNSEL.

AND THE PROOF OF SERVICE REFLECTS SERVICE OF THE NOTICE OF RULING ON EX PARTE MOTION TO SHORTEN TIME TO BE RELIEVED AS COUNSEL.

THE PROBLEM WE HAVE AT THIS POINT, OF COURSE, IS THAT I DON'T HAVE ANY PROOF OF SERVICE THAT THE ACTUAL APPLICATION ITSELF WAS SERVED ON MR. NAJM.

AND I AM SURE MR. PLEVIN WILL ACKNOWLEDGE THAT HE WAS SERVED WITH THE MOTION.

MR. PLEVIN: YES, I WAS.

MR. HENRICHS: IT SHOULD BE – I'LL GET ANOTHER COPY, BUT IT SHOULD BE ATTACHED TO THE ACTUAL MOTION.

MR. PLEVIN: I BELIEVE IT WAS ATTACHED TO THE EX PARTE.

THE COURT: OKAY. WELL, THE PROPOSED ORDER IS LODGED WITH THE COURT. BUT I DON'T HAVE ANY INDICATION THAT IT OR ANY OF THE OTHER MOVING DOCUMENTS HAS BEEN SERVED ON THE PLAINTIFF. WE NOW HAVE AN INDICATION BY MR. PLEVIN THAT ON BEHALF OF THE DEFENDANT THEY WERE SERVED WITH THE MOTION. SO THAT CREATES A LITTLE BIT OF A HANGUP FOR US.

I AM WILLING TO TRAIL THIS FOR A WEEK SO THAT YOU CAN BRING THAT IN. I DON'T WANT TO SIMPLY BE RULING BASED UPON A REPRESENTATION THAT IT IS COMING. SO I WILL CONTINUE THIS MOTION. THIS IS A MOTION TO BE RELIEVED FOR A WEEK FROM TODAY, TWO O'CLOCK IN THE AFTERNOON, THIS DEPARTMENT.

MR. HENRICHS: IF I SUBMIT IT, DO I NEED TO APPEAR?

[13] THE COURT: WHY DON'T YOU DO A TELEPHONE APPEARANCE.

MR. HENRICHS: OKAY. THAT WOULD BE GREAT.

THE COURT: SO WE'RE LOOKING, THEN, AT APRIL 27 AT TWO O'CLOCK IN THE AFTERNOON, THIS DEPARTMENT.

MR. HENRICHS: ALL RIGHT.

THE COURT: YOU'LL NEED TO MAKE ARRANGEMENTS FOR THE TELEPHONIC APPEARANCE ABOUT THREE DAYS IN ADVANCE OF THAT HEARING DATE, JUST TO LET YOU KNOW.

MR. PLEVIN: I WILL GIVE NOTICE AND PREPARE AN ORDER AND PROPOSED JUDGMENT AND SUBMIT IT TO COUNSEL.

THE COURT: THANK YOU.

MR. PLEVIN: I DO HAVE A QUESTION, KIND OF UNRELATED, IF I COULD TAKE JUST TWO MINUTES OF THE COURT'S TIME. IT IS A PROCEDURAL ISSUE.

THE COURT: ON THIS CASE?

MR. PLEVIN: YES. AND IT DOESN'T HAVE TO BE ON THE RECORD, BUT OBVIOUSLY THAT IS UP TO YOU, YOUR HONOR.

THE COURT: WE'LL LEAVE IT ON THE RECORD.

MR. PLEVIN: I FILED A LOT OF SUMMARY JUDGMENT MOTIONS AND I ALWAYS FOLLOW THIS FORMAT IN LOS ANGELES AND IN ORANGE COUNTY AND IN SAN DIEGO. AND I AM JUST CURIOUS ABOUT YOUR RULING ON SUMMARY ADJUDICATION BECAUSE THIS IS THE WAY I USUALLY DO IT. AND I HAVE NEVER HAD A JUDGE TELL ME THAT IT HAS NOT BEEN DONE PROPERLY. SO I WANT TO MAKE SURE I AM DOING IT PROPERLY.

THE COURT: ALL I CAN DO IS REFER YOU TO 342 AND SEND [14] YOU OFF TO SEE IF I AM WRONG.

MR. PLEVIN: I JUST WANT – YOU TOOK THIS AS ASKING FOR AN ISSUE OF ADJUDICATION. WHAT WE TRIED TO DO IS SET FORTH SEPARATELY EACH REASON WHY A CAUSE OF ACTION WAS DEFECTIVE IN OUR VIEW. AND THAT'S WHY THEY ARE BROKEN OUT THAT WAY. THAT IS NOT THE WAY – THAT'S NOT THE WAY YOU TOOK IT? THAT'S NOT –

THE COURT: THAT'S NOT THE WAY I TOOK IT. I MAY BE MISTAKEN.

MR. PLEVIN: THAT'S FINE. I AM JUST TRYING TO DO IT CORRECTLY. SO I APPRECIATE YOUR THOUGHTS ON THAT.

THE COURT: ALL RIGHT. GENTLEMEN, HAVE A GOOD DAY.

MR. PLEVIN: THANK YOU.

MR. HENRICHS: THANK YOU.

(PROCEEDINGS ADJOURNED.)

REPORTER'S CERTIFICATE

I, CHRISTINE L. BELASCO, CSR NO. 6189, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING REPORTER'S TRANSCRIPT, CONSISTING OF PAGES 2 THROUGH 14 IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED AT SANTA ANA, CALIFORNIA, THIS 10TH DAY OF MAY, 2004.

/s/ CL Belasco
CHRISTINE L. BELASCO,
CSR 6189
OFFICIAL COURT REPORTER